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Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States
October Term, 1997

JAMES BENJAMIN, JR., et al
Petitioners,

v.

FARID C. BINA
Respondant.

Petition for Writ of Certiorari to the
STATE OF MAINE, SUPREME JUDICIAL COURT
Sitting as the Law Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Appellate Court denied Petitioners Procedual Due Process of Law by failure to review for lack of transcript, when in fact a transcript was provided by the petitioners?

2. Whether the Court Denied Petitioners Equal Protection of the Laws by not permitting a hearing?

3. Whether the Court gave Petitioners adequate notice of alleged missing parts of their Appendix? Does lack of notice deny Petitioners Procedure Due Process?

4. Whether the Court's Failure to review Deny Petitioners the First Amendment Right to Petition the Government for Redress of Grievances?

5. Whether Trial Court erred by permitting the jury to consider parol evidence to make a contract?

6. Whether the Parol Evidence Rule of Substantive Law is a Meritious Issue?

7. Whether the jury could find an account relation between the parties when the parties did not establish an account?

8. Whether an unconditional check could be converted into a Money-Lent loan without consideration or mutual assent?

II

PARTIES

Defendants and appellants before the Supreme Judicial Court of Maine were the Petitioners herein, James Benjamin, Jr., M.D., and Rebekah Benjamin, on behalf of themselves. Plaintiffs and Appellees before the Supreme Judicial Court of Maine was Farid C. Bina.

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OPINIONS BELOW

In the State of Maine, SUPREME JUDICAL COURT, Sitting as the Law Court, Civil Action, Law Docket No. ARO-96-76, before the Honorable, WATHEN, C.J., ROBERTS, GLASSMAN, CLIFFORD, RUDMAN, DANA, and LIPEZ, J.J., presiding: James Benjamin, Jr., M.D. and Rebekah Benjamin, Appellants v. Farid C. Bina, Appellee, No. ARO-96-76, April 4, 1997.
[Reprinted at Apps.]

The decision of the Superior Court is not reporte. The Judge's Oral Orders and the jury verdict is reported in the Clerk's entry of May 30, 1996, proceedings.
[Reprinted at Apps.]

In the State of Maine, Aroostook County Superior Court, Civil Action, Docket No. CV-95-110, The Honorable Paul T. Pierson, Justice, Superior Court presiding: Farid C. Bina, Plaintiff and Counterdefendant v. James Benjamin, Jr., M.D. and Rebekah Benjamin, Defendants and Counterclaimants, No. CV-95-110, March 21, 1996,
[Reprinted at Apps.]

In the State of Maine, Aroostook County Superior Court, Civil Action, Docket No. CV-95-110, the Honorable Paul T. Pierson, Justice, Superior Court presiding: Farid C. Bina, Plaintiff and Counterdefendant v. James Benjamin, Jr., M.D. and Rebekah Benjamin, Defendants and Counterclaimants, No. CV-95-110, January 5, 1996, [Reprinted at Apps.]

In the State of Maine, Aroostook County Superior Court, Civil Action, Docket No. CV-95-110, the Honorable Paul T. Pierson, Justice, Superior Court presiding: Farid C. Bina, Plaintiff and Counterdefendant v. James Benjamin, Jr., M.D. and Rebekah Benjamin, Defendants and Counterclaimants, No. CV-95-110, July 11, 1995, [Reprinted at Apps]

In the State of Maine, SUPREME JUDICAL COURT, Sitting as the Law Court, Civil Action, Law Docket No. ARO-96-76, Decision No. Mem 97-68, April 30, 1997. (Rehearing) [Reprinted at Apps.]

JURISDICTION

After the Maine Supreme Judicial Court issued its decision on April 4, 1997, and its Denial of Motion for a Rehearsing on April 30, 1997, Appellants timely filed a Notice of Intent to Apply for a Writ of Certorari on July 29, 1997. Jurisdiction is conferred upon this Court by 28 U.S.C. Section 1257(a).

STATUTES AND REGULATIONS

16 M.R.S.A. Section 355
33 M.R.S.A. Section 51
11 M.R.S.A. Section, 3-1104 and 3-1106
Maine Rules of Civil Procedure, Rule 74.

STATEMENT OF THE CASE

A. Introduction

This is a case of Bills and Notes in which parol evidence was used to violate the Statute of Frauds. This case presents important questions arising under the Constitution and Laws of the United States. More specifically the case presents a denial of Procedural Due Process and Equal Protection of the Laws in derogation of the Fourteenth Amendment to the Federal Constitution in that the State of Maine Court of last resort has refused to review a trial court's orders and decisions under the pretext that "...defendants have failed to provide a transcript of the trial..." when in fact the Petitioners herein did provide a transcript.

The Said State Court of last resort has so far departed from the accepted and usual course of judicial proceedings as to sanction such a departure as to call an exercise of the Supreme Court's supervisory power.

The instant case petetions for Certiorari to the State of Maine Supreme. Judicial Court Sitting as the Law Court, Before WATHEN, C.S., and GLASSMAN, CLIFFORD, ROBERTS, RUDMENT, DANA, and LIPEZ, J.J. The case came up on Appeal from an entry of judgment in the Superior Court, Aroostook County, Maine, by the Honorable Paul T. Pierson, Justice of the Superior Court. The Superior Court judgment contained the following orders.

1. Order granting Plaintiff's Motioin for Summary Judgment.

2. Order Approving Attachment and Trustee Process.

3. Order on Plaintiff's Motion to Dismiss Defendant's Counterclaims, [See Apps.]

The decision from the Supreme Judicial Court contained, among other things, the following issues:

(a) Provision of transcript on appeal, and

(b) Nature and Extent of Designation of Record on Appeal.

Finally, the Petition will address the issue of the use of Parol Evidence to abrogate the clear terms of negotiable instruments, hat is, the subsequent oral changing of the contents of unconditional checks.

B. Factual Background

The Complaint is for Account Annexed, and Restitution for Unjust Enrichment. The Counts of the Complaint are as follows: (1) Acocount Annexed, and (2) Restitution. The Counter-claims are for (1) Slander, (2) Joint Venture (3), and Fraud and Deceit.

The said Complaint offers copies of six (6) checks which do not state the checks are for loans. The said checks are accompanied by an unsigned and undated itemization which declares the checks at issue are for money "due" from defendant Petitioners to Plaintiff Appellee. The foregoing itemization was never delivered to Petitioners, or either of them, but was attached to the Complaint so as to alter and vary the clear meaning of the checks. The Complaint offers no evidence of money lent and Appellee maintains tht money was lent jointly to the Petitioners herein.

The Complaint of Appellee was answered by Petitioners who denied the belated notion of a "loan" or "unjust enrichment." Petitioners also filed Counterclaims for Libel and Slander, Fraud and Deceit and Joint Venture. The checks used to support Appellee's Complaint are clear and unambiguous. Said checks were issued from Appellee's business checking account. Appellee never made demand upon Appellants for any amount of money concerning the checks he would call "loan's" more than a year latter.

C. The Opinions Below

1. The Superior Court

The Superior Court issued the following Orders:

A.) Order Approving Attachment and Trustee Process made against Defendants property in an amount of $27,000.00.

B.) Order on Plaintiff's Motion to Dismiss Defendant's Counter-claims.

C.) Order on Defendant's Request for Production of Documents and Interrogatories; Review of Court's Order on Plaintiffs Motion for Summary Judgment on Defendant's Cross-claims; and, orders for future discovery.

2. The Supreme Judicial Court

The Supreme Judicial Court issued the following orders:

A.) "Because the defendants have failed to provide a transcript of the trial we cannot review most of the issues... raised."

B.) That ".... To the extent the record provided permits evaluation of certain of the issues raised, they are with merit," and

C.) That ".... Upon motion of Appellants James Benjamin, Jr., M.D. and Rebekah Benjamin for reconsideration, it is ORDERED that the motion is hereby DENIED.

"It is FURTHER ORDERED that the mandate shall issue forthwith.

ARGUMENT

In this case Appellee, Farid C. Bina is a physician. Petitioner James Benjamin, Jr., M.D. is likewise a physician

Petition Rebekah Benjamin is office manager for Dr. Benjamin. On or about October 11, 1993, Doctors Benjamin and Bina entered into a joint venture to provide a medical building for the private practice of Medicine. Between October practice of Medicine. Between October 11, 1993 and March 13, 1994, Appellee Bina negotiated six (6) checks to Petitioners with the understanding that Petitioner Dr. Benjamin would and did locate handicap-acessible medical facility. The checks totalled Twenty-Seven Thousand Dollars ($27,000.00). Subsequently, Dr. Bina withdrew from the joint venture and he then sued Dr. Benjamin for the return of the Twenty-Seven Thousand Dollars ($27,000.00) on the theory that the several checks constituted a loan account. Petitioner Rebekah Benjamin, Office Manager for Dr. Benjamin, three (3) checks were issued to her as payee.

The case was eventually tried before a jury and the jury returned a verdict in favor of appellee Bina. The May 30, 1996, verdict stated: ".... for plaintiff Farid C. Bina for $23,000.00 against defendants James Benjamin, Jr., and Rebekah Benjamin. James Benjamin, Jr., owes $13,000.00 Rebekah Benjamin owes $10,000."

Certiorari Should Be Granted Because the Maine Supreme Judicial Court, A State Court of Last Resort has Denied Petitioners Due Process of Law, Equal Protection of the Laws, and the Right to Petition the Government For a Redress of Grievances in the Following Particulars:

This statement is categorically untrue the evidecne of transcript follows:

> "TRANSCRIPT BILL. Pay to: Wendy S. Ambrose, 055-78-2257 Amount $612.00 paid. P.O. BOX 191 Easton, ME 04740. For preparation of 255 pages of original transcript plus one copy, and 0 extra copies of: Civil appeal in the case of Bina v. Benjamin, docket

number CV-95-1101 ARO-96-76 heard before Justice Paul T. Pierson on May 30, 1996."

The prsumption is that the Court either had this transcript or had access to this transcript. Further, the Appellants filed three copies of the transcript as PART II of Appendix to their Brief. The case should be reversed because of the Court's reprehensible behavior which constitutes a denial of Procedual Due Process of Law in derogation of the Fourteenth Amendment to the United State Constitution.
[Reprinted in Apps.]

From another view point the statement ".... we cannot review most of the issues they have raised .... " is true, but the limitation is the Court's limitation, not the Defendant's limitation. Their own self-imposed limitations are further evidence of a denial of Due Process of Law as related to Petitioners James Benjamin, Jr., M.D. and Rebekah Benjamin.

On April 14, 1997, Petitioners, by a request "for a rehearing", directed the Court's attention to the fact that there was in fact a transcript provided. On April 30, 1997, the Court "ORDERED that the motion ("for reconsideration") is hereby DENIED. It is FURTHER ORDERED that the mandate shall issue forthwith." It is important to note that the Court did not state the key words of art that after carful review and consideration, the motion was denied. In short, the Court's own curt, abritrary and capacious method admits that they have at once Denied Petitioners, and each of them both Due Process of Law and Equal Protection of the Laws in derogation of the Fourtheenth Amendment to the Constitution of the United States.

The Second or duofold thrust of the Petition is the Maine Supreme Judicial Court's holding: "To the extent the record provided permits evaluation of certain of the issues raised, they are without merit."

Petitioners, and each of them hereby contend that the learned Court's holding is without merit. On the other hand Petitioner's issues are meritorious. The following legal issues are germane and controlling:

(1) First, commercial checks are themselves written contracts. The contracts are for unconditional payments. (Coastal Plains Dev. v. Tech-con Corp. 531 S.W. 2d 143)

(2) Petitioner's Special Defense of the Statute of Frauds was relevant. Parol evidence should not have been used to introduce a contract of money lent. The presumption of a clear unambiguous check is that the check is given to discharge an existing obligation, (Weed v. Clark, 109 A. 8; Titcomb v. Powers, 109 Me 347). Receipt of a check does not make one a debtor. Parol evidence of an oral agreement, alleged to have been made at the time of drawing a check cannot be admitted to vary, qualify, contradict, add to or substract from the absolute terms of the written checks, (Brown v. Spofford, et al 95 U.S. 474; Martin v. Cole, 104 U.S. 30).

(3) By depostition Appellee stated he did not intend to lend money to Rebekah Benjamin, (See comments of trial judge, Paul T. Pierson, at page 210 and 211 of the Transcript of the proceedings ".... so Mrs. Benjamin I'm not going to put a question to the jury about a loan to you because it does nto appear to me from the evidence that its been generated that there was a loan to you" Apps.

(4) There is an issue that Appellee sued Petitioenrs "jointly and severally," on checks No. 230, 278,

and 352 issued to Rebekah Benjamin for $14,000.00; and, on checks Nos. 388, 404 and 438 issued to Dr James Benjamin, Jr., for $13,000.00 (see Counts One and Two of Appellee's Complaint Appendix, pages ___). The Undertakings sued upon are for the duty of another, and must, to save it from the Statute of frauds and perguries. Be in writing (Clark v. Russell, 3 Dall 415, 1 L Ed 660; Hunt v. Rousmanies 8 Wheat 174, 5 L Ed 352; Richardson v. Harwick, 106 U.S. 252, 1 S. Ct 213, 27 L Ed 145.)

(5) Appellee sued on an alleged "Account" in Count One and for "unjust enrichment" in Count Two. The affidavits accompaning Appellee's Complaint State ".... The loans made by Plaintiff to Defendant James Benjamin, Jr., M.D. were made in good faith ".... to assist the Defendants."

(6) The record contains Jury Instruction No. 1, wherein the trial judge instructed the jury on Maine Statutory Section 16 M.R.S.A. 355 as follows: "In all action, brought on an itemized account annexed to the complaint, the affidavit of the plaintiff, made before a notary public using a seal, that the account on which the action is brought is a true statement of the indebteddness existing between the parties to the action with all proper credits given and that the prices or items charged therin are just and reasonable shall be prima facie evidence of the truth of the sttement made in such affidavit and shall entitle the plaintiff to the judgment unless rebutted by competent and sufficient evidence..."

Petitioner's objected to the use of this because the instruction assumed facts that at

once violated the statute of frauds and permitted the use of parol evidence to abrogate six unconditionl commercial checks. Each check was a complete contract. (See Weed v. Clark, 109 A. 8; Titcomb v. Powers, 109 Me 347, Brunswick Artesian Well Co. V. Hutchinson, 420 A. 2d 1227) Evidence which is excluded by the parol evidence rule may not properly be considered by jury, (Burrowes Corporation v. Read, 116 A. 2d 127, Elwell v. Borland 160 A. 27).

In Summary, the Maine Judicial Court has denied Petitioners Due Process and Equal Protection of the Laws; and, even more egregious, they have brazenly denied Petitioners the basic and fundamental First Amendment right of Freedom to petition the Government to redress wrongs, (App. p)

The Maine Supreme Judicial Court has a serious limitation on the ability to administer justice. The statement "the Defendants did not provide a transcript" is neither a reason nor an excuse. If the Court did not have a transcript, it was because of their own negligence or maladministration. Under Maine Law both parties share responsibility for production of the Transcript. If a transcript is not provided, the proper remedy is dismissal after due notice. There wasn't any prior notice in this case. The fact that the Court has the transcript, and claims otherwise is even a more serious transgression. (Apps. p)

Sometimes whether an issue is meterious is a matter of differing opinions. However, in

this case it appeas to be well settled-Law, that the Statute of Frauds is a meritious justicible issue. Going back before 1799, in the venerable United States Supreme Court Case of Clerk v. Russel, Chief Justice Ellesworth held that, "The undertaking declared upon, in the count, to which the verdict applies, being for the duty of another, it must, to save it from the statute of frauds and perjuriese, be in writing and wholly so." This is still the Law of the Land.

Additionally there are other well settled, meritious issues in this case: Commercial checks are contracts. Unconditional contracts may not be varied by parol evidence. Receipt of a check does make one a debtor. Contracts in excess of a certain sum and beyond a certain time, must be in writing. The doctrine of unjust enrichment does not apply to commercial contracts, There is a meritious issue whether the Court can instruct the jury to violate the Statute of Frauds. There was a meritious issue of whether either the Court or the jury could make a contract for the parties.

CONCLUSION

The holding of the Maine Supreme Judicial Court is strange and unusual. The curt, arbitrary and capacious treatment of Petitioners denies them Due Process and Equal Protection of the Laws. The Law is no respector of Persons. For whatever reason, Petitioners do not warrant this ill treatment. No higher duty, no more solemn responsibility becomes the Courts of this land than to treat all persons equally, rich or poor, black, white or whatever color, creed or persuasion. The right to petition the government is fundamental. Petitioners were entitled to notice and hearing. Petitioners' issues are justicible. There were precedual steps that should have been taken from the trial Court level. eg notice. order and compliance. There was also a lack of notice at the Supreme Court level as to whether the Appeal was prosecuted duly and orderly.

The petition should be granted on all issues.

DATE: 7-23 1997

9-27-97

Respectfully Submitted,

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Rebekah Benjamin

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MAINE SUPREME JUDICIAL COURT
Mem 97-68
Docket: ARO-96-76
Submitted on briefs March 7, 1997
Decided April 4, 1997

Panel: WATHEN, C.J. ROBERTS, GLASSMAN, CLIFFORD, RUDMAN, DANA, and LIPEZ, JJ.

FARID BINA

V.

JAMES BENJAMIN, JR., et al

MEMORANDUM OF DECISION

James Benjamin, Jr., and Rebekah Benjamin appeal from the judgment entered in the Superior Court (Aroostook County, Pierson, J.) following a jury verdict finding them responsible for repayment of $23,000 to Farid Bina. Because the defendants have failed to provide a transcript of the trial, we cannot review most of the issues they have raised. C.N. Brown Co. v. Gillen. 569 A.2d 1206, 1209 n.2 (Me. 1990). To the extent that the record provided permits evaluation of certain of the issues raised, they are without merit.

The entry is:

Judgment affirmed.

STATE OF MAINE
AROOSTOOK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.: CV-95-110

FARID C. BINA,

Plaintiff,

JAMES BENJAMIN, JR., M.D.
and REBEKAH BENJAMIN,

Defendant.

CHARGE TO THE JURY

THE COURT: Members of the jury, now that you heard all of the evidence in this case, as well as the arguments of the plaintiff's lawyer and the argument of the defendant party, it's my duty to read you the instructions on the law which apply in this case. These instructions will be in three parts. First, the general rules that define and control the jury's duties. Second, the instructions that explain the law to you. And, third, some rules for your deliberations.

Several of you have been on prior juries. please disregard any prior instructions that you've heard or prior evidence and apply only these instructions to the evidence that you find in this case. It is your duty to find the facts from all of the evidence that has been presented to you' and to those facts, you must apply the law as I give it to you, whether you agree with it or not.

You must not be influenced by any personal likes or dislikes, by opinion, prejudice, or by sympathy. That 'O means you must decide the case solely on the evidence before '1 Jlyou and in accordance with these instructions, and you'll recall that you took an oath promising to do so and you were selected by all of the parties in this case on the basis of that oath.

In following these instructions, please follow Jail of them. Do not single out some and ignore others. They are all equally important to all of the parties. Do not read into these instructions or anything I may have said or done during the trial as to what your verdict should be. I've been fairly active in this trial. If I become impatient with any party, I also beg your indulgence in that regard. It's my job to attempt to be fair, to attempt to be fair to all of the parties involved, and to try to get the case tried in a reasonable, efficient, and timely manner, but yet a fair manner to all of the parties.

So, anything I've said or done to any of the parties or any of the witnesses or the attorneys should not in any way influence you as to what your decision should be. have appeared unduly harsh or if it appeared that I have talked to one side more than the other, do not be a influenced by that. I'm simply doing my best to conduct the trial, conduct the trial in a fair and impartial manner. So, don't read into anything I've said or done what your verdict should be.

The evidence from which you are to decide this case consists of the sworn testimony of the witnesses while under oath, both on direct examination and cross-examination, regardless of who called the witness. You may also consider as evidence the exhibits that have been offered and there are many and they will go to the jury room Is with you as evidence. You may consider as evidence the prior testimony given under oath of any of the witnesses who is have testified, any statements of the parties given by the parties whether under oath or not as evidence in this case.

Additionally, you've heard the parties stipulate on Occasion as to certain facts. That simply means they agree as to the facts and that it is not necessary to bring in more witnesses to something that they agree upon and they agree that that stipulation may be submitted to you as evidence and to be considered as evidence.

In reaching your verdict, you may consider only the testimony and the exhibits and stipulations and the evidence that

I've described to you. In other words, the testimony, the exhibits, the stipulations, and any deposition testimony, that's evidence.

The final statements made and the final arguments are not evidence, That's a summary of what the parties wish to tell you. Likewise, their opening statements are not evidence. The opening statements and final arguments are simply an effort to help you understand the evidence that's been presented.

During the trial, when there were objections about the testimony or the way that a question was asked, that's not evidence; and as I've indicated, do not be influenced by my rulings on any objections. If I instructed Is you to disregard any testimony in this case, that simply means to give it no weight during deliberations. Anything you may have seen or heard when the Court is not in session is not evidence. You are to decide the case solely on the evidence that's been presented to you and it's been submitted to the scrutiny of all of the parties.

In any trial, there are two kinds of evidence called direct evidence and circumstantial evidence. Again, direct evidence is simply testimony by a witness about what that witness saw or heard or did and they tell you that directly. And circumstantial evidence is simply proof of one or more facts from which you can conclude that something else has happened, even though it isn't proved to you directly.

The law allows you to consider both types of evidence, direct and circumstantial. It does not make one more important than the other. It leaves it up to you the s jury to decide the significance and the weight to be given to any evidence that you have heard.

So while you should consider the evidence that I've described to you, you are permitted to draw such ' reasonable inferences from the testimony and exhibits in evidence as you feel are justified in the light of common experience. In other words, you may make deductions and reach conclusions which reason and common sense lead you to draw from the facts that have been established by the evidence in this case.

In deciding the facts of this case, you'll have to decide which witnesses to believe and which witnesses not to believe. You may believe everything a witness says or part of it or none of it. In deciding what to believe, you may consider a number of factors, including the following things; the witness's ability to see or hear or know the things about which the witness testified; the quality of the witness's memory; the witness's manner while testifying; whether the witness has an interest in the outcome of the case or any motive or any bias or any prejudice; whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence; and how reasonable was the witness's testimony when considered in the light of a other evidence that you believe.

In this case, you've heard testimony from the a doctors regarding their medical practice in a sense that would make them -- make them expert opinions on that issue. is When a person testifies as an expert by their education and " experience, they may state their opinion on matters in that field and may state their reasons for that opinion. Expert opinion testimony should be judged just like any other testimony. You may accept it or reject it or give it such weight as you think it deserves considering the witness's Is education and experience, the reasons given for the opinion, and the other evidence in the case.

Additionally, any witness who testifies may be discredited or impeached by contradictory evidence by a showing that the witness testified falsely concerning an important matter or by evidence that some other time the witness has said something or done something or has failed to say something or do something which is inconsistent with the witness's present testimony. If you believe that any witness has been so impeached, then it is your exclusive right to give the testimony of that witness such

believability or weight, if any, as you think it deserves.

This is a civil case. Um, many of you have been on criminal cases. The burden of proof in a criminal case is different. That's proof beyond a reasonable doubt. That's a

stricter standard. The standard in a civil case is called a preponderance of the evidence. That's a legal term, but it simply means more likely than not.

In a civil case, in order to recover, the person I(who brings a lawsuit has to prove that what they claim is more likely than not. That means they have to prove their case by what's called a preponderance of the evidence, and more likely than not is simply a determination by you as finders of the fact that in weighing the facts you find that the plaintiff claims that what they claim to be true is more Is likely than not the truth,

In other words, you're the finders of fact. So, is you have to weigh the evidence that's been presented to you; and in the process of weighing the facts that have been presented to you as finders of the facts, if the plaintiffs facts to you that prove what they claim is more likely than not, they are entitled to recover. In other words, if you were to put the evidence on a scale, in order to recover, the plaintiff would have to tip the scale in their favor. Doesn't matter how far it tips. It can tip slightly or greatly. It doesn't matter but it has to tip, in other words, more likely than not, in order to recover. If the scale is even or it tips the other way in weighing the facts, then the plaintiff is not entitled to recover.

Now, in this case, the defendants have raised a defense to you claiming that there was a joint venture. So, they would have to prove to you in their defense that what s they claim is more likely than not. In other words, if you decided there was a joint venture, then the plaintiff would not have been able to prove to you more likely than not that " there was a loan or that there was unjust enrichment.

So, this is a fact finding process. You have to evaluate the evidence and weigh it. If the plaintiff proves to you what they claim is more likely than not, then they is are entitled to recover. If the defense is entitled -- the defense is entitled to your verdict if the plaintiff has not established the burden of proof as I've described to you.

In one of the exhibits, you have what's called an account annexed; and I would instruct you with regard to Count 1 or the

account annexed, that's a claim on a loan. Now, this lawsuit against Dr. Benjamin, Farid Bina as the plaintiff against Dr. Benjamin, is based on a loan. There are two counts, and Count 1 is a count against -- is Dr. Bina against Dr. Benjamin alone, not his mother, on the basis of the loan.

In Count 2, Dr. Bina is suing both Dr. Benjamin and Mrs. Benjamin, Rebekah Benjamin, claiming that they were unjustly enriched; and because they received his money through a process and the elements of unjust enrichment that they are required to pay him back.

When I get to the jury verdict form, I'11 go over the verdict form with you and that will explain to you how s the verdict can be rendered; but at this time, I'm going to explain to you the elements of the claims that the plaintiff to is making and the defense that the defendant is raising.

In an action brought on an itemized account annexed, the affidavit of the plaintiff made before a notary public using a seal that the account on which the action is brought is a true statement of the indebtedness existing between the parties to the action with all proper credits Is given and the prices or items charged therein are just and reasonable shall be sufficient evidence of the truth of the is statement made in the affidavit and shall entitle the plaintiff to the judgment unless that affidavit is rebutted by competent and sufficient evidence. In other words, that the plaintiff has not proved to you that it's more likely than not that what they claim is true, is accurate.

In this case, as I've indicated in Count 1, the plaintiff Farid Bina has claimed a loan was made to the defendant James Benjamin, Jr. In order to prove that a loan was made, there must be three elements that the plaintiff must establish in this action for money lent. The plaintiff must prove to you that the money was delivered to the defendant, that is that he received it. Number two, that s the money was intended as a loan; and, number three, that a the loan is not repaid.

If the plaintiff does not establish any of these s three or any one of these three elements, his claim fails. If he does establish by a preponderance of the evidence that the money was

delivered, that it was intended as a loan, and that the loan was not repaid, then he is entitled to your verdict .

A loan case is essentially a simple case. The facts may be complicated and complex. They may be -- you may decide they are simple, but you simply weigh the facts Is and has the plaintiff proved to you that it's more likely than not that the money was delivered, that the money was is intended as a loan, and that the loan was not repaid. Those are the elements.

If the plaintiff proves to you that it's more likely than not, those three elements, you would find for the plaintiff. If the plaintiff has not satisfied you of these elements as I've described them to you, you must find for the defendant Dr. Benjamin.

The second claim is based on a claim of unjust enrichment, and this is a claim brought by Dr. Bina against both Dr. Benjamin and his mother Rebekah Benjamin. The claim of unjust enrichment does not act to give restitution to one who makes a bad business bargain. In order to recover on unjust enrichment, the plaintiff would have to prove the elements to establish a claim of unjust enrichment; and those elements are also fairly simple, that a benefit was conferred upon the defendant by the plaintiff.

And, again, when you vote, you'll have to vote as 1' Ilto each defendant separately. So when I say defendant, I mean each defendant separately because there is a separate claim against each one of them.

So, that a benefit was conferred upon a defendant by the plaintiff, there was appreciation or knowledge by the defendant of the benefit, and that the acceptance or retention of the benefit and the circumstances that are given to you make it inequitable for the defendant to retain the benefit without payment for the value of the benefit conferred or, in other words, if the retention of the benefit by the defendant would be unjust.

So, in order to recover in this case against Dr. Benjamin, the plaintiff would have to prove that it's more likely than not that a benefit was conferred by Dr. Bina upon Dr. Benjamin; there was a negotiation of the benefit or knowledge of the benefit by the defendant Dr. Benjamin; and that the retention of the benefit

or the money by the defendant Dr. Benjamin would be unjust. Those are the elements.

If the plaintiff proves those elements by a preponderance of the evidence that it's more likely than not, you would recover a verdict in his favor. If you are not satisfied it's more likely than not that there was unjust enrichment as I defined it, you would render a verdict for the defendant Dr., Benjamin. You would award no money in other words.

There is also a claim of unjust enrichment against Rebekah Benjamin. To prove that claim, the plaintiff would have to prove to you that it's more likely than not that a benefit was conferred upon Rebekah Benjamin by the plaintiff Dr. Bina; that there was an appreciation of the benefit by Rebekah Benjamin; and that the retention of the benefit by Rebekah Benjamin would be unjust and the circumstances in the case.

In this case, as I've indicated and as the parties have indicated to you, there is a claim by the defendants of a joint venture. I'm going to give you two instructions that relate to a joint venture. A joint venture is an association between two or more individuals or entities who agree to pool their efforts and resources to jointly seek profits. It is similar to a partnership, although generally more limited in scope and duration. Like a partnership, a joint venture comes from a contract; and its existence must be established by proving the elements of a the contract which may be what are called expressed or implied, and I'11 explain that to you.

Such a contract may be expressed or implied and a jury, finders of the fact, must consider the conduct of the parties and the surrounding circumstances before reaching a conclusion as to the intent of the parties. The whole scope of the arrangement must be examined and each of its parts considered in relation to all of the other parts to ascertain the real intent of the parties.

As I have indicated, part of this case involves a Is claim of a joint venture. The existence of a joint venture may be established by proving the elements of the contract. is In order to have a joint venture, you have to have an agreement or a contract. Therefore, if you determine that a contract exists, you must

determine -- you must determine if a contract existed in regards to the defendants' claim that there existed a joint venture between the parties.

You may find that a contract existed only if you find by a preponderance of the evidence that it's more likely than not that there was an offer in this case of a joint venture, there was an acceptance of that offer for a joint venture, that there was a meeting of the minds of the s parties, in other words between Dr. Bina and Dr. Benjamin, as to what actions were contemplated under the contract at the time the contract was agreed to. That is, there was a mutual assent to be bound by the terms of the contract. In other words, they agreed to be bound in a joint venture and that each party received or would receive something of value from the contract.

Again, to prove a contract, and they must prove each of these elements that it's more likely than not, there must be an offer. There must be acceptance. There must be a meeting of the minds as to what the actions were contemplated under the contract at the time the contract was agreed to. That is, there must be a mutual assent to Is be bound by the terms of the contract and that each party received or would receive something of value from the is contract.

Contract does not have to be in writing. Mat be the result of oral discussions between the parties. However, a mere declaration of intention to enter into an agreement at some time in the future, even if the terms are stated with some specificity, is not an offer which can be accepted to form a binding contract. That simply is a statement of intention to do something in the future.

If you find that a contract or a joint venture is not proven in this case, then you must determine whether the defendants owe money to the plaintiff on the claims of repayment of a loan and a claim of unjust enrichment. And if you determine that a joint venture or contract existed in a this case, then you still must determine whether or not any money is owed by the defendants to the plaintiff.

The damages issue in this case is -- the instructions are quite simple. Damages mean in this case lithe amount of money, if any, that you award. I'm going to give you an instruction as to the measure of damages. That does not mean -- I have to give damage instructions in every case. That should not be an indication of which party is entitled to recover.

Before you can award, for example, any money in this case, you must first determine that a loan was made or that there was unjust enrichment, as I've described it. If you do determine that damages should be awarded, then any damages you award in this case must be based upon the evidence and a finding by you that the plaintiff seeking damages has convinced you that it's more likely than not that they have been damaged as they claim to have been damaged.

Damages may not be awarded on the basis of If guesswork or speculation or on the basis of passion, prejudice, or sympathy; and they cannot be increased to penalize or punish a person. If the plaintiff is entitled to recover damages, you must award an amount that will justly and fairly compensate him for the loss that he has sustained, In this case, the plaintiff claims that the loss a is the amount of money that he claims was loaned to the defendant or given to them for their benefit.

Mr. Murray, you will be the foreman of the jury. The function of the foreman is to oversee the discussion in the jury room, to call for a vote on each question that you will receive on the jury verdict form -- I'11 give you that form in a minute -- and to fill out the form in accordance with the votes of the jury.

The jury is free to conduct their discussion or their deliberations in any manner that they find or feel is appropriate. However, sometimes it's useful to go around the room and let each person speak individually so everybody is isn't trying to talk at once about a separate matter.

If you would just bear with me a moment, then I'll go through the jury verdict form with you.

The verdict that you reach in this case must represent the considered judgment of each of you as jurors. In order to return a verdict in a civil case, at least six of you must agree. There will

be eight of you in the jury room; but when you have an agreement of six, you can answer the question, and then you have a verdict on that question. So, the vote can be 6-2, 7-1, or 8-0.

You must each decide the case for yourself, but do so only after an impartial consideration of the evidence a in this case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if the discussions persuade you that you should; but do not surrender your honest belief as to the weight or effect of the evidence solely for the mere purpose of reaching a verdict.

The jury officers are not allowed to communicate or answer any questions. Doesn't mean there will be questions; but if there are, Mr. Foreman, they must be in writing and they must be -- I'11 either answer them in Is writing on a note signed by the foreman or they may be answered up here in the courtroom orally.

The way that a verdict is rendered in a civil case is by the jury answering the questions in the jury verdict form. And in order to answer the questions, you'll have to review the evidence and deliberate and vote on each question separately. So, the question has to be -- each question that's applicable has to be answered separately with a separate vote.

The first claim is Count 1, and that's the claim of a loan. Do you find that the defendant James Benjamin, Jr., is obligated to the plaintiff for money loaned by the plaintiff Farid Bina to the defendant James Benjamin, Jr.? s (yes or no. In other words, you have to decide whether there a I(was a loan in accordance with the instructions that I've given you and the elements of the loan that I have given you.

You vote yes or no. In other words, when you have a vote of six, you can fill in the yes or no. When it says number agreeing, simply record the vote of the jury; and as I've indicated, 6-2, 7-1, or 8-0, whatever it is. If is you say yes, there was a loan, then you have to decide how much Dr. Benjamin owed to Dr. Bina; and you write it out in words if you determine there is an amount owed. On the Is right-hand side, simply put the figure.

Again, number agreeing and number not agreeing. That's Count 1.

Count 2 is a claim against both Dr. Benjamin and Rebekah Benjamin. Do you find, in Question 1, that the defendant James Benjamin, Jr., was unjustly enriched by money given by the plaintiff Farid Bina to the defendant James Benjamin, Jr.? Yes or no. Number agreeing, number not agreeing.

And if you say yes, you'd answer Question 2, which is simply what amount does James Benjamin, Jr., owe to the plaintiff Farid Bina as a result of being unjustly enriched? And you would fill in an amount. If you vote no, then you don't answer Question 2 obviously; and if you vote 11"0 O" Question 1 and Count 1, you don't answer Question 2. You only award money if you determine that there is liability or money owed.

Count 3 relates to the unjust enrichment claims against Rebekah Benjamin. Do you find the defendant Rebekah Benjamin was unjustly enriched by money given by the plaintiff to the defendant Rebekah Benjamin? Yes or no. " Number agreeing, number not agreeing. If you vote yes, what is the amount; and if you vote no, you don't have to answer is Question 4.

Um, these are separate counts; and if there is an award in this case, you're still required to fill out all of Is the answers to all of the questions. If you award -- if you find there was no loan under unjust enrichment, obviously you don't award any money; but if you do find there was a loan, you would have to determine what amount is due under the loan and you have to separately and independently determine whether there was unjust enrichment.

If you find that there was -- these are simply two different ways to collect sums based upon whatever facts the jury decides; and if you decide there was unjust enrichment, you would award an amount based upon your deliberations. The plaintiff, however, is not entitled to collect either two or three times for the same amount of money. He would only be able to collect on one judgment. In other words, even if you decide the

plaintiff is entitled s to recover against Dr. Benjamin on Count 1 and against Dr. Benjamin on Count 2 and against Rebekah Benjamin on Count 3, he's only to collect on one judgment. These are s just separate ways to collect the money.

Likewise, if you order an amount against Dr. Benjamin and you also order an amount against Mrs. Benjamin, he's not entitled to collect twice. He would have to give credit for any money collected by one to the other person before it can be collected. But you don't have to worry about collection efforts. Your only job is to decide whether money is owed on a loan or whether Is money is owed on unjust enrichment; and if you decide there was no loan or there was no unjust enrichment, obviously there is no award.

I understand the parties have previously inspected all of the exhibits and that they have all been properly offered by the parties and admitted by the Court.

MR. CURRIER: Plaintiff is satisfied with the exhibits, your Honor.

DR. BENJAMIN: Yes, your Honor.

THE COURT: Okay. And I will see both parties here, if the jury will just remain seated.

(The following proceeding was held in the back room out of the presence of the jury.)

THE COURT: This is an opportunity for you to abject to any instructions given, or the Plaintiff Or defendant to object, you have already objected in writing to the language of same of Mr. Currier's specific instructions. I've changed the language Slightly in some of those instructions. And if you want to object to anything I've said, this is your time to do it because that preserves your right of appeal on the instructions, if you would like to do so. Mrs. Benjamin, any objection?

MRS. BENJAMIN: I'm sorry, but I need to hear again what you said. I'm sorry, you need to repeat it. We entered some objections

THE COURT: Okay. Your objections -- let me put it this way. Your objections you entered in writing 'Jill be considered, preserved for the record; and I will make a specific finding that they are preserved.

MRS. BENJAMIN: Oh.

THE COURT: So they are in the file and they are in writing; and if you have any other objections other than what you've filed in writing, this is your opportunity.

MRS. BENJAMIN: I have none.

THE COURT: Mr. Benjamin?

DR. BENJAMIN: The only -- the only objection I have was just there was not -- there was just a mention of the word fraud but not as part of our defense, not a counterclaim, but the mention of fraud. That was the only thing. I just didn't see any instruction

THE COURT: Okay. I didn't instruct on that because I don't find the issue of fraud was generated. Okay?

DR. BENJAMIN: Yes, your Honor. That was the only objection I had.

THE COURT: Okay. Mr. Currier, any objections?

MR. CURRIER: Plaintiff is very satisfied with the instructions to the jury, your Honor.

THE COURT: Okay. We'll go back in and I'11 send the jury down; and when they knock, we'll have a verdict. Okay?

MR. CURRIER: Thank you, your Honor.

MRS. BENJAMIN: Oh, all right.

(The conference in the back room was concluded at this time.)

THE COURT: These are all the exhibits, Madam Clerk. Mr. Foreman, there are no specific rules on the length of deliberations. It simply leaves it up to the jury to give due consideration to the evidence that you receive and take such time as you find is necessary to deliver a conscientious verdict. Okay?

MR. FOREMAN: I have a question.

THE COURT: Yes, sir.

MR. FOREMAN: Is it possible for us to get a copy of the list that you read to us that explain what unjustly enriched entails

THE COURT: Okay. I'11 repeat. Those are written instructions. I'11 confer with the attorneys to see whether there is a consent to do that, but I'11 read those to you again. What I'11 do is give you Count 1 first now that you have the verdict form. That's essentially a loan.

In order to prove that a loan existed, they have to prove -- the plaintiff has to prove that it's more likely than not that three things happened, that money was delivered to Dr. Benjamin, that the money was intended as a loan when it was delivered, and that the loan was not repaid. So, those are the elements of the loan.

With regard to the claim of unjust enrichment, the plaintiff must prove to you that a benefit -- in this case, the benefit would be money -- was conferred upon the defendant Dr. Benjamin and/or Mrs. Benjamin by the plaintiff. In other words, the plaintiff conferred upon the defendant a benefit, that there was an appreciation or knowledge of the benefit. In other words, they were aware that they got the benefit of the money, the money or the benefit of the money, and that the retention of the

benefit by the defendant, either one, would be unjust given the circumstances of the case. In other words, there was a benefit conferred upon the defendant by the plaintiff. There was an appreciation or knowledge of the benefit by the defendants, and that the retention of the benefits by the defendant would be unjust. Those are the three elements.

If you still want a copy of that, simply make a note and say could we have -- request it and I'11 respond. Okay?

MR. FOREMAN: Okay.

THE COURT: And any other questions that you might have, if there are other questions. Okay?

MR. FOREMAN: Okay.

THE COURT: Thank you,

(The jury left the courtroom to begin deliberations at 5:20 p.m. The following proceeding was held out of the presence of the jury.)

THE COURT: Parties may leave the courtroom. Please don't leave the courthouse however, because there may be notes or there may be a verdict and we want to be able to have access to the parties.

(Court recessed at 5:20 p.m. and reconvened at 6:05 p.m. The following proceeding was held out of the presence of the jury.)

THE COURT: The Court has received a note from the jury that said, could we have the criteria that constitutes, number one, a loan; number two, unjust enrichment; and, number three, a contract. It's signed by the foreman.

Is there any objection to my giving them the printed instructions that I read to them?

MR. CURRIER: Plaintiff has no objections.

MRS. BENJAMIN: None.

DR. BENJAMIN: Defendant has no objection.

THE COURT: Okay. I'11 do that and that will be sent directly to the jury,

MR. CURRIER: Thank you, your Honor.

DR. BENJAMIN: Thank you, your Honor,

MRS. BENJAMIN: Do we still wait here?

THE COURT: You don't have to wait in the courtroom. I just had to put this on the record which is why you had to come up.

(Court recessed at 6:06 p.m. and reconvened at 9:53 p.m.)

JURY VERDICT

MADAM CLERK: Everyone may be seated except the foreman.

THE CLERK: You may inquire.

MADAM CLERK: Mr. Foreman and members of the jury, have you agreed upon a verdict?

MR. FOREMAN: We have.

MADAM CLERK: If you'd hand the verdict form to the jury officer.

THE COURT: Thank you. You may be seated. Thank you. You may read the verdict.

MADAM CLERK: Question 1: Do you find that the defendant James Benjamin, Jr., is obligated to the plaintiff for money loaned by the plaintiff Farid Bina to the defendant James Benjamin, Jr.? Answer: Yes. Number agreeing: 6. Number not agreeing: 2.
Question 2: What amount do you find defendant James Benjamin, Jr.,, owes to plaintiff Farid Bina as a result of a loan by the plaintiff to the defendant James Benjamin, Jr.? An swer : $23,000. Number agreeing: 6. Number not agreeing: 2.
Count 2, Question 1: Do you find that the defendant James Benjamin, Jr., was unjustly enriched by money given by the plaintiff Farid Bina to the defendant James Benjamin, Jr.? Answer: Yes. Number agreeing: 6. Number not agreeing: 2.
Question 2: What amount does James Benjamin, Jr., owe to the plaintiff Farid Bina as a result of being unjustly enriched? Answer: $13,000. Number agreeing: 6. Number not agreeing: 2.
Question 3: Do you find that the defendant Rebekah Benjamin was unjustly enriched by money given by the plaintiff to the defendant Rebekah Benjamin? Answer: Yes, Number agreeing: 6. Number not agreeing: 2.
Question 4: What amount does Rebekah Benjamin owe to the plaintiff Farid Bina as a result of being unjustly enriched? Answer: $10,000. Number agreeing: 6. Number not agreeing: 2.
THE COURT: Okay. Does either party wish to inspect the jury verdict form that was just read to you by the clerk?

MR. CURRIER: Thank you, your Honor, no.

THE COURT: Do you wish to inspect the jury verdict form?
MRS. BENJAMIN: No.

DR. BENJAMIN: No, your Honor.

THE COURT: Okay. Members of the jury, I'd like to thank you for your participation and your deliberations; and if you could just wait for a moment in the jury room when you go downstairs, I'11 be down shortly.
Thank you. You may be in recess.
(The jury left the courtroom at 9:56 p.m. The following proceeding was held out of the presence of the jury.)
THE COURT: The clerk is directed to enter judgment pursuant to the jury verdict form, and Court will be in recess.
Thank you. Have a good evening.
[The proceedings were concluded and court recessed at 9:57 p.m.)

CERTIFICATE

I hereby certify that the foregoing is a correct transcript of my stenographic notes of the proceeding of the above-entitled cause of action.

Dated this 28th day of September, 1996.

/s/_____
Wendy S. Ambrose
Official Court Reporter

STATE OF MAINE
AROOSTOOK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-95-110

FARID C. BINA
Plaintiff

JAMES BENJAMIN, JR., M.D.
and REBEKAH BENJAMIN
Defendants

ORDER

This cause came on for hearing, and was argued by counsel, upon the motion of the plaintiff for a protective order on the defendants' request for interrogatories and production of documents. Additionally, the Court indicated it would review its motion for summary judgment on the defendants' cross-claims and would issue orders for future discovery.

The Court concurs that the defendants' interrogatories and requests for production of documents are excessive. (The defendants' interrogatories contain 406 questions.) The defendants are given 20 days to resubmit 30 questions to the plaintiff by written interrogatory. The limited number of 30 includes all sub-parts. The plaintiff is given 20 days to respond. The defendants are also to limit their request for production of documents to those documents not in their possession or control and related only to the plaintiff's claim of repayment of a

$27,000.00 debt, or the defendants' claimof fraud based upon the delivery of checks #388, 404, and 438. The revised request for production is to be

completed within 15 days of this order.

The Court has reviewed the motion for summary judgement on the defendants' counter-claim, and declines to reopen its order of summary judgment on Count I. Count I was a ruling of law and the Court considered all of the information filed prior to January 1, 1996 in'making its ruling. In order to bring the counter-claims, the defendants must have had some good faith basis to make the claims. The information submitted to the Court and in the possessionof the defendants failed to generate an issue of material fact or failed as a matter of law to survive the plaintiff's motion, and the defendants' deposition reveals that there is no basis for the claims as a matter of law.

The Benjamins properly note that the Court granted summary judgment to the plaintiffs on counts 2 and 3 prior to the completion of the defendants' discovery. The defendants are given until May Ist, 1996 to file new affidavits in opposition to plaintiffs' motion for summary judgment on Counts II and III of the defendants' counterclaim. Thereafter, the Court will reconsider its order of January 5, 1996 without further hearing.

Thedefendants do not have to respond to the plaintiff's motion for summary judgment on its complaint, as it is obvious from the affidavits on file that the defendants deny the repayment obligation and the matter should proceed to trial forthwith.

No further pleadings may be filed by either party without advance consent and upon a showing of good cause set forth in a motion and accompanying memorandum limited to 2 pages in length. Pleadings filed without advance consent by the Court will be sanctioned as will motions without a good faith basis.

Additionally, no pleadings or motions shall be filed without a certification that'the parties or counsel have personallv communicated and are unable to resolve differences between the parties.

The parties are to further certify by April 30, 1996 that they have made good faith efforts to resolve the matter and have conducted good faith negotiations to settle this case, which include a good faith demand by the plaintiff and good faith

These rulings do not preclude the defendants from defending, in trial, the debt payment by a defense that the plaintiff did not expect

repayment or was investing in the medical-practice of the defendant or the defendants and the plaintiff.

No further discovery may take place, except Rebekah Benjamin will be given leave to take depositions until April 12th, 1996, if desired, due
to the withdrawal of her counsel.

This matter is set for trial on May 28, 1996. The Court further notes an order of remand on January 31st, 1996 due to the lack of final judgments being entered by the court, and the court declines to certify any judgments as final.

Dated: March 21, 1996

/s/_____
Paul T. Pierson Justice, Superior Court

STATE OF MAINE
AROOSTOOK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO: CV-95-110

FARID C. BINA,

Plaintiff,

v.

JAMES BENJAMIN, JR., M.D. and Rebekah Benjamin,

Defendant.

ORDER ON PLAINTIFF'S MOTION TO DISMISS DEFENDANTS' COUNTERCLAIMS

UPON MOTION AND UPON HEARING on Plaintiff's Motion for Summary Judgment on Defendants' Counterclaims, this Court finds that each of the three "Cross Complaints", which are actually counterclaims, of Defendants James Benjamin, Jr., M.D.and Rebekah Benjamin fail to state a claim upon which reliefe may be granted, pursuant to Me.R.Civ.P. 12(b)(6). The Court further finds that there exist no issues of material fact concerning the three couterclaims of each Defendant, and therefore, summary judgment is GRANTED in favor of the Plaintiff and against Defendants.

IT IS THEREFORE ORDERED that Counts I, II and III of the Defendants' counterclaims be DISMISSED, and that summary judgment be entered for Plaintiff.

SO ORDERED.

1/5/96

/s/_____
Justice Pierson, J.Superior Court

STATE OF MAINE
AROOSTOOK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-95- 110

FARID C. BINA,
Plaintiff,

JAMES BENJAMIN, JR., M.D.,
and REBEKAH BENJAMIN,
Defendants,

ORDER APPROVING ATTACHMENT AND TRUSTEE PROCESS

AFTER NOTICE to Defendants and hearing, and on affidavits, the Court finds that it is more likely than not that the Plaintiff will recover judgment, including interest and costs, in an amount equal to or greater than $27,000.00; the Defendants has shown that the value of liability insurance, bond, or other security and other property or credit attached by other writ of attachment or trustee process available to satisfy any judgment aga ins t the De fe ndant s , Jame s Benj amin , Jr ., M.D. and Rebekah Benjamin, in this action totals $0.00.

IT IS HEREBY ORDERED that attachment and trustee process, may be made against the De fendant s ' property in an amount of $27,000.00.

Dated: July 11, 1995.

/s/ Pierson, J.
Justice, Superior Court

STATE OF MAINE

SUPREME JUDICIAL COURT Docket No. ARO-96-76
Sitting as the Law Court Decision No. Mem 97-68

FARID C. BINA
Appellees

v.

JAMES BENJAMIN, JR., et al
Appellants

ORDER

Upon motion of appellants James Benjamin, Jr., M.D. and Rebekah Benjamin for reconsideration, it is ORDERED that the motion is hereby DENIED.

It is FURTHER ORDERED that the mandate shall issue forthwith.

Dated: April 30, 1997

For the Court:

/s/_____
Kermit V. Lipez, Associate Justice

Recieved April 30, 1997
Supreme Judicial Court.

THE CONSTITUTION

OF THE

UNITED STATES

Amendment I (1791)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of Speech, or of the press; or the right of the people peacebly to assemble, and to petition the Government for a redress of grievances.

Amendment XIV (1868)

Section 1. All person born or naturalized in the United States, and Subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

16 M.R.S.A. SECTION 355. Affidavit of plaintiff as prima facie evidence

In all actions brought on an itemized account annexed to the complaint, the affidavit of the plaintiff, made before a notary public using a seal, that the account on which the action is brought is a true statement of the indebtedness existing between the parties to the action with all proper credits given and that the

prices or items charged therein are just and reasonable shall be prima facie evidence of the truth of the statement made in such affidavit and shall entitle the plaintiff to the judgment unless rebutted by competent and sufficient evidence. When the plaintiff is a corporation, the affidavit may be made by its president, vice-president, secretary, treasurer or other person authorized by the corporation.

MAINE CIVIL PRACTICE RULES

OF CIVIL PROCEDURE

RULE 74. THE RECORD ON APPEAL

TEXT OF RULE

73.11a Docketing Appeal in Law Court

The September 1, 1980 amendments to the appeal rules significantly changed Maine's appellate practice by vesting jurisdiction of the appeal in the Law Courtimmediately after the filing of the notice of appeal. Under subdivision (f), added to Rule 73 effective September 1, 1980, when the Superior Court clerk must "forthwith" transmit to the Clerk of the Law Court certified copies of the notice of appeal and docket entries. The case is then marked "Law" on the docket of the Superior Court, the appeal is docketed in the Law Court upon receipt of the notice of appeal and docket entries, and the Superior Court may take no further action in the case other than those specified in Rule 73(f). See section 73.11 of this Supplement.

The new rules make clear that the jurisdiction is vested and all further actions are taken -- in the Law Court as soon as the Clerk of the Law Court dockets the appeal. One possible source of confusion is that under the January 1, 1978 amendments, the appeal was docketed in the Law Court as soon as the Clerk of the Law Court dockets the appeal. One possible source of confusion is that under the January 1, 1978 amendments, the appeal was docketed in the Law Court to docket the appeal "[u]pon receipt of the certified copies of the notice of appeal and the docket entries" transmitted by the Superior Court clerk. The confusion doubtless will be removed be amendment, but in the interim, the rules should be understood to require the docketing of the appeal and the vesting of jurisdiction in the Law Court on the earlier date, as provided in Rule 73(f).

73.11b Dismissal of Appeal

Effective September 1, 1980, a new subdivision (g) was added to Rule 73 to govern the dismissal of appeals. An appeal may not be dismissed voluntarily by the appeallant acting alone. If the appeal is to be dismissed prior to oral argument, a stipulation must be entered into by all of the parties and filed with the Clerk of the Law Court. After oral argument, the appeal may be dismissed only with leave of the Law Court. An appeal may be involuntarily dismissed on motion of a party or on the Law Court's own initiative for failure to comply with the appeals rules.

(1) Within 10 days after filing the notice of appeal the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary. The order shall be in writing and within the same period a copy shall be filed with the Clerk of the Law Court. If no such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.

(2) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, he shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) Unless the entire transcript is to be included, the appellant shall, within the 10 day time provided in paragraph (1) of this subdivision, file a statement of the issues he intends to present on the appeal and shall serve on the appellee a copy of the order or certificate and of the statement. If the appellee deems a transcript of other parts of the proceedings to be necessary, he shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of such designation the

appellant has ordered such parts, and has so notified the appellee, the appellee may within the following 10 days either order the parts or move in the Law Court for an order requiring the appellant to do so.

1995	CLERKS ENTRIES
May 22	Complaint filed with $100.00 filing fee. Receipt No. 5541 Original summonses filed. Service not yet executed.
May 22	Motion for approval of attachment and trustee process of real property, affidavit in support of motion, Memorandumof law, and proposed order filed by Currier, Esq.
May 22	Case file notice and pretrial scheduling statement form mailed to Currier Esq.
May 30	Original summonses filed. Service on Rebekah Benjamin on 5/22/95. Service on James Benjamin, Jr., M.D. in hand on 5/22/95.
June 9	Answer, Special Defenses, Cross-Complaint for slander, joint venture and Fraud and deceit, Memorandum in objection to Motion for approval of attachment and trustee process and Affidavit of James Benjamin, Jr. filed by defendants pro se.
June 12	Answer, Special defenses, cross complaint for slander, joint venture and fraud and deceit filed by Rebekah Benjamin with memorandum in objection to motion for approval of attachment and trustee process and Affidavit of Rebekah Benjamin objection to motion.

June 13	Memorandum in further objection to motion for approval of attachment and trustee process filed by James Benjamin.
June 15	Motion for continuance filed by James Benjamin (Pro se)
June 15	Motion for continuance filed by Rebekah Benjamin
June 15	Plaintiff's answer and affirmative defenses to "cross" of James Benjamin, Jr., M.D., Plaintiff's answer and affirmative defenses to "cross" -complaint of Rebekah Benjamin and Affidavit in opposition to James Benjamin, Jr., M.D.'s Memorandum in "further" objection to Motion for Approval of attachment and trustee process filed by Currier, Esq.
June 15	Notice of discovery service of notice to take oral deposition of James Benjamin, Jr., M.D. served on him pro se on 6/14/95 filed.
June 16	"Motion to continue is denied. The defendant in Docket No. 93-296 has demonstrated a history of long delay securing counsel. The defendant is local and is to obtain counsel forthwith or appear pro se." Pierson, J. Copies to counsel and notification by telephone to pro se defendants.
June 16	Notice of discovery service (4) of interrogatories served on both James and Rebekah Benjamin and request for production etc. served on both James and Rebekah Benjamin filed.

June 16	Witness subpoena for deposition to James Benjamin to appear for deposition on 6/26/95 filed.
June 19	Objection to the inspection or copying of materials and proposed order to Quashing witness Subpoena for deposition filed by Benjamin (pro se)
June 20	Notice of discovery service of request for admissions served on Rebekah and James Benjamin, Jr. on 6/19/95 filed.
June 20	Objection to Attorney Currier's Affidavit filed by Rebekah Benjamin, pro se.
June 20	Objection to Attorney Currier's Affidavit filed by James Benjamin, Jr. pro se.
June 21	Appearance entered on behalf of Rebekah Benjamin by Kelley, Esq. (See letter dated 6/21/95).
June 21	Hearing on Motion for Approval of Attachment. Pierson, J. and Wendy Ambrose, Court Reporter. All parties placed argument on record. Pierson, J. has under advisement.
June 21	Affidavit in support of motion for attachment filed by Currier Esq.
June 22	Notice of discovery service of amended notice to take oral deposition of defendant James Benjamin served on him pro se on 6/21/95 filed.
June 22	Motion to compel d for sanctions filed by Currier, Esq. with proposed order.

June 23	Appearance of Peter Kelley, Esq. o/b/o'Rebekah Benjamin without limitation. See letter dated June 23, 1995.
June 26	Pretrial Scheduling Statement filed. Non-jury trial requested.
June 27	Pretrial scheduling statement and jury demand by defendant filed.
June 27	Jury Trial Filing Fee in the amount of $300.00 paid. Receipt 5731.
June 28	"Expedited pretrial order filed. Discovery to be closed by 6 months Case Ordered placed on the Jury trial list 30 days after close of discovery. By order of the presiding justice the Expedited Pretrial Order is incorporated by reference in the docket." Pierson, J. copies to counsel.
July 11	Order approving attachment and trustee process. Pierson, J. copies to all parties.
July 11	Motion to extend [discovery until 7/28/95-] filed by Kelley, Esq. on behalf of Rebekah Benjamin.
July 17	Answers to Interrogatories, Admissions of James Benjamin, Jr., M.D. Objections to Interrogatories and Response of James Benjamin, Jr., M.D. filed with Exhibits A, B1, B2 and C.
July 18	Motion [to extend time to complete discovery] Granted. James P. Archibald, Justice copies to counsel.

July 21	Transcript of Motion for Attachment of 6/21/95 filed by Ambrose, Ct. Rep.
July 21	Notice of discovery service of notice of filing request for admissions served on Farid C. Bina by J. Benjamin, Jr., M.D. Pro se.
July 24	Trustee's Disclosure of Peoples Heritage Savings Bank filed.
July 24	Trustee' Disclosure of Katahdin Trust Co. filed.
July 27	Trustee's Disclosure Under Oath of Aroostook County Federal Savings and Loan Assoc. filed by Kirkpatrick, Esq.
July 28	Trustee's Disclosure Under Oath of Flirst Citizens Bank filed.
July 28	Disclosure Under Uath by Trustee Key of
July 28	Trustee's Disclosure Under Oath of James Benjamin, Sr. filed.
July 31	Summons to trustees filed. (Trustees: James Benjamin, Sr.; Blue Cross/ Blue Shield of Me; Benefit Management of Maine; Maine Employers Mutual Ins. Co.; First Citizen's Bank; Aroostook County Federal Savings h Loan Assn.; The County Federal Credit Union; Key Bankof Maine; Katahdin Trust Company; Peoples Beritage Savings Bank; Maine Medical Assistance; and Maine Municipal Employees Plan.)
Aug 1	Summons to Trustee filed. Service: 7/26/95-C C S Admin. Services.

Aug 2	Notice of Discovery Service of Defendant's Response to Request for Production of Documents, Answers to Interrogatories and Response to Request for Admissions Propounded Upon Defendant, Rebekah Benjamin, by Plaintiff served on Richard Currier, Esq. on 8/1/95 filed.
Aug 3	Notice of Appeal to the Law Court filed by James Benjamin, Jr. Copies to Currier, Esq., Kelley, Esq., Wendy Ambrose and James Chute, Clerk of the Law Court. $100 fee paid. Rec. #5922.
Aug 3	LAW
Aug 8	Disclosure by Trustee (Maine Municipal Association) filed.
Aug 8	Disclosure by Trustee (County Federal Credit Union) filed.
Aug 8	Plaintiff's motion for leave to amend answer to defendants' filed by Currier, Esq. with request for hearing (non - 1/4) of law in support of motion and proposed order.
Aug 11	Stipulation to voluntarily dismiss the summons to tnistee Administrative Services, Inc. filed by Currier, Esq.
Aug 11	Trustee Disclosure of Maine Employers- Mutual Ins. Co. filed by James Kriger Chute "

Aug 14	State of Trustee Benefit Management of Maine filed by Lendall Smith, Esq. with his entry of appearance as counsel for Trustee.
Aug 14	Statement under oath of Blue Cross Blue Shield of Maine filed by Barry A. White.
Aug 15	Defendant Rebekah Benjamin's objection to motion for leave to amend answer to defendant's cross-claims filed by Kelley, Esq.
Aug 15	Trustee Disclosure Under oath (Rebekah Benjamin) filed by Kelley Esq.
Aug 15	Statement of Trustee filed by Department of the Attorney General by E. Anne Carton, Esq.
Aug 17	Notice of discovery service of response served on Currier, Esq. on 8/16/95 filed.
Aug 21	Notice of discovery service of response to request for admissions served on Benjamin, Jr. on 8/18/95-filed.
Aug 23	Original summons to trustee filed. Service on U.S.B.P.I. (Champus) Service on Adminstar of Defense on 8/10/95.
Aug 23	Objection to Plaintiffs' motion to amend answer, memorandum of law with attached Exhibits filed by James Benjamin, Jr., M.D. pro se.
Aug 24	Objection to attachment filed by James Benjamin, Jr., M.D. pro se with attached Exhibits.

Aug 30	Plaintiff's memorandum ini-esponse to defendant's objection to motion to amend answer filed by Currier, Esq.
Aug 31	Plaintiff's reply to defendant James Benjamin, Jr., M.D.'s Objection to Attachment filed by Currier, Esq.
Sept 1	Statement of points of appeal filed by James Benjamin. Jr.. H.D. pro se.
Sept 1	Designation of contents of record on appeal and affidavit filed by James Benjamin, Jr., M.D. pro se.
Sept 6	Summons to trustee, Rebekah Benjamin and Affidavit of service on July 27, 1995 filed by Currier, Esq.
Sept 11	Defendants objection to amendment filed by James Benjamin, Jr., M.D.
Sept 14	Original file sent to James C. Chute, Clerk of the Law Court. Copies of documents relating to pending motions retained for action in the Superior Court. All parties notified by mailing docket entries and index.
Sept 18	Answer to notice of evasive and incomplete responses to plaintiff's discovery filed by Benjamin, Jr., pro se
Sept 29	Plaintiff's Motion for Summary Judgment on Defendants' "Cross-Complaint filed by Currier, Esq. with Statement of Material facts, Memorandum of Law, Request for Hearing and Proposed order.

Sept 29	Notebook containing appendix of exhibits in support of Plaintiff's Motion for Summary Judgment filed by Currier, Esq.
Oct 6	Notice of filing interrogatories filed by James Benjamin Jr. Pro Se.
Oct 11	Notice of setting of hng on mtns to amend & Sum Judg on 10/23/95 mailed to James Benjamin, Jr.
Oct 16	Plaintiff's motion for protective order, Memorandum of Law, Request for hearing and proposed order filed by Currier, Esq.
Oct 17	Motion for continuance for hearing on all pending motions set for Oct. 23, 1995 filed by Benjamin (pro se).
Oct 20	Plaintiff's objection to defendant James Benj.amin, Jr., M.D.'s Motion for continuance filed by Currier, Esq. with Proposed order.
Oct 20	Defendant, Rebekah Benjamin's objection to motion for summary judgment, Statement of Material facts filed with copies of documents.
Oct 20	Memorandum of Law for James BenJamin Jr., M.D., Answer of Plaintiff's -Statement of material faces, Defendant's Statement of material factsr Reply to Motion for Summary Judgment, Affidavit of James Benjamin, Jr., M.D. and Affidavit of Timothy Myshrall filed by Benjamin, pro se.

Oct 23	Motion to Amend Answer and For Summary Judgment scheduled this date. All parties heard on the record. Pierson, J. and Wendy Ambrose, Court Reporter. Pierson, J. has under advisement.
Oct 25	Notice of filing request for production and Notice to take oral deposition of Farid C. Bina served on Currier, Esq. on 10/25/95 filed by James Benjamin, Jr., M.D. Pro Se.
Oct 25	Request for production of Dacumente and things propounded to Plaintiff Farid C. Bina filed by Jamea Benjamin, Jr., M.D. Pro Se.
Oct 27	Witness Subpoena for Deposition of Farid C. Bina and Return of Service filed by Dr. Benjamin. Service! 10/26/95.
Oct 31	Motion to Quash Subpoena far Deposition and for Protective Order with Incorporated Memorandum of I,nw, Request for Hearing on Motion and proposedorder filed by Currter, Esq.
Nov 3	Defendant's Reply to Plaintiff's Motion for Protective Order, Memorandum of Law Opposing Plaintiff's Motion for Protective Order and Request for Hearing on Plaintiff's Motion for Protective Order filed by Benjamin, Pro Se.
Nov 3	ORDER: "Upon motion and without hearing the Court finds that the subpoena issued on behalf of Defendant James Benjamin, Jr., M.D. and served upon Plaintiff on October 26, 1995 should be QUASHED .The parties are ordered to confer and agree upon another date and time which is convenient. All other matters will be decided

	after hearing." Pierson, J. Copies to counsel and Benjamin, Pro Se.
Nov 7	Notice to Take Oral Deposition of Farid C. Bina filed by Benjamin, Pro Se.
Nov 8	Request for production of documents and things propounded to Plaintiff Farid C. Bina by James Benjamin, Jr., H.D. and notice of filing request for.production filed.
Nov 27	Motion to withdraw as counsel for Rebekah Benjamin filed by Kelley, Esq. (Currier objects).
Nov 27	Reply to plaintiff's motion to quash subpoena and for protective order filed by James Benjamin, Jr., M.D. (pro se)
Nov 28	Motion for protective order end for sanctions, memorandum of law, request for hearing and proposed order filed by Currier, Esq.
Nov 30	Western Union mailgram dated 11/29 from Reberca Benjamin? "Please remove attorney Peter Kelley. I shall proceed pro se to date
Nov 30	Latter dated 11/30/95 from James Benjamin, Jr., M.D. pro se: "Please withdraw the Notice of request for production and request for production both of which were filed and dated 10/25/95 as adverse counsel Currier had not received a copy of same... "
Dec 1	Motion to dismiss counsel and entry of appearance pro se filed by Rebecca Benjamin. amin.

Dec 1	Copy of Report of conference of counsel filed by Currier, Esq. (Letter mailed to Kelley,Esq. dated 11/30/95).
Dec 7	Western Union Mailgram received: "... requesting time to get new counsel [has health problems] request continuance to a new date certain..." Rebecca Benjamin pro se.
Dec 7	Order filed on motion to dismiss: " Attorney Kelley is allowed to withdraw. " Pierson, J. Copies to Currier, James Benjamin, Rebekah Benjamin and Kelley, Esq.
Dec 20	Notice of setting of all pending matters on Feb. 1, 1996 in Caribou mailed to James Benjamin, Jr., M.D. and Rebekah Benjamin with copy to Currier, Esq.
Dec 21	Reply to motion for proctective order and for sanctions and Memorandum of Law filed by Rebekah Benjamin, Jr., M.D.
Dec 22	Motion for relief from final order of attachment, Affidavit, Memorandum of law filed by Rebekah Benjamin.
Dec 26	Amended nqtice of setting mailed to all parties.
1996	
Jan 2	Motion for enlargment of time for discovery by Rebekah Benjamin, Pro Se with Affidavit, Motion for enlargement of tim by James Benjamin, Jr., M.D. Pro to March 28, Memorandum of Law and 1996 for discovery to March 28, Pro Se.

Jan 4	Motion for sanctions, Affidavit in support of Motion, Law and proposed order filed by James Benjamin, Jr., 1996 filed Memorandum of M.D. pro se.
Jan 5	Order on Plaintiff's motion to dismiss defendants' counterclaims: ".. the court finds that each of the 3 "cross-complaints" which are actually counterclaims of defendants ... fail to state a claim upon which relief may be granted ... there exists no issues of material fact concerning the three counterclaims of each defendant, and, therefore, summary judgment is granted in favor of the Plaintiff and against defendants." Pierson, J. Copies
Jan 8	Objection to Motion for Relief from Final order of attachment, Memorandum of law, Request for hearing and Exhibits filed by Currier.
Jan 10	Objection to motions for extension of time for discovery filed by James Benjamin, Jr. and Rebekah Benjamin filed by Currier, Esq.
Jan 17	Notice of setting for all pending motions (additional info) mailed to James and Rebekah Benjamin.
Jan 19	Plaintiff's objection to Motion for sanctions filed by Currier, Esq.
Jan 23	**Motion** for Summary Judgment, Memorandum of Law, Statement of Facts filed by Currier, Esq. with Affidavit of Farid C. Bina, Index to Appendix, Plaintiff's Bill of Costs, Request for hearing and Proposed Order.

Jan 23	Writ Ne recipiatur filed by James Benjamin, Jr., M.D. (pro se)
Jan 23	Reply to Plaintiff's Memorandum of Lav and fact in support of plaintiff's Objection to Rebekah Benjamin's Motion for Relief from Final Order of Attachment filed by Rebekah Benjamin (pro se)
Jan 23	Defendant's response to plaintiff's objection to Rebekah Benjamin's motion for relief filed by Rebekah Benjamin with Certificate of Service.
Jan 23	Reply to plaintiff's objection to motion for enlargement of time for discovery filed by James Benjamin, Jr., M.D. and Rebekah Benjamin (pro se)
Jan 23	Motion to compel Discovery for interrogatories for production filed by James Benmjamin, Jr., M.D. (pro se) with Memorandum of Law, Affidavit, Notice of Motion (for 2/1/96), Request for Testin;onial hearing filed by
Jan 29	Notice of appeal to the Law Court filed by James Benjamin, Jr., M.D. Pro se et als. with $100 filing fee. (Receipt No. 6706). Copy of notice and docket entries mailed to plaintiff. Copy of docket entries mailed to defendant. Attested copy of notice and of docket entries mailed to James C. Chute, Clerk of the Law Court.
Jan 29	Law

Jan 30	Motion for Recusal and Memorandum filed by James Benjamin, Jr., M.D. and Rebekah Benjamin
Feb 1	Plaintiff's response to defendants' Writ ne Recipiatur and Objection to Defendant's motion to compel filed by Currier, Esq.
Feb 1	Matter set on motion day for telephone conference on all pending motions. Pierson, J. has under advisement. (Wendy Ambrose, Ct. Reporter)
Feb 1	Motion for rescusal denied reasons stated on the record. Pierson, J.
Feb 2	Notice of setting of jury trial on May 28, 1996 in Caribou mailed to Currier, Esq. and defendants.
Feb 2	Order of remand filed. " ... Notation of judgment .. does not reflect any final judgment .. Case will be restored to the Law Court subject to: Appellants file their notice of appeal . . Appdllants cause the record on appeal to be expanded to reflect all action taken .." Wathen, C.J.
Mar 21	Order filed. " .. Court .. declines to reopen its order of summary judgment on Count I .. the defendants are given until May 1, 1996 to file new affidavits in opposition to motion for summary judgment on Counts II and III of the defendants' counterclaim .. thereafter, the Court will reconsider its order of 1/5/96 without further hearing .. n Pierson, J. Copies to counsel.

Apr 1	Notice of Filing Interrogatories served on Richard Currier, Esq. on 4/1/96 filed by Benjamin, Pro Se. Notice of Filing Request for Production served on Richard Currier, Esq. on 4/1/96 filed by Benjamin, Pro Se.
Apr 8	Notice to Take Written Deposition of Plaintiff, Counterclaim Defendant Farid C. Bins filed by Rebekah Benjamin, Pro Se.
Apr 25	Notice of Discovery Service of Plaintiff's Answers to Interrogatories and Response to Request for Production of Documents Propounded by James Benjamin, Jr., M.D. served on James and Rebekah Benjamin on 4/24/96 filed.
Apr 29	Copy of Settlement Offer filed by Currier, Esq.
May 8	Affidavits of Rebekah Benjamin and James Benjamin, to Judge's Order of March 21, filed by the Benjamins.
May 20	Notification of Discovery of Plaintiff's Supplemental Response to Request for Production of documents (including copies of January and February 1994 Bank Statements and Checks for Acct. 102-9026699 and copies of Bank Statements for Period Requested for Acct. X02-0938372 served on Rebekah Benjamin, Pro Se, and James Benjamin, Jr., Pro Se, on May 17, 1996, filed.
May 23	Notification of Discovery of Plaintiff's Supplemental Response to Request for Production of Documents (Copies of checks for "personal" account 502-0938372 for Sept. 1,

	1993 through April 1, 1994) served on Rebekah Benjamin and James Benjamin, Jr. on May 22, 1996,.filed.
May 28	Report of Conference of Counsel filed. Estimated length of trial 1 day.
May 28	Jury selection held. Pierson, J. Ambrose, rep. Caribou. Jury Trial began.
May 28	Witness list for Trial filed.
May 30	Jury instructions no. 1, 2, & 3 filed. Objections to jury instructions no. 1, 2, & 3 filed.
May 30	Jury Verdict filed. Judgment entered for plaintiff Farid C. Bins for $23,000 against defendants James Benjamin, Jr. 6 Rebekah Benjamin. James'Benjamin, Jr. owes $13,000. Rebekah Benjamin owes $10,000.
June 4	Files 1 6r 2 returned to law court.
June 7	Plaintiff's Bill of Costs filed.
June 20	Notice of Appeal to the Law Court filed by James Benjamin Jr. M.D., Pro Se, with $100 filing fee.. Receipt X7371. Attested copy of notice and attested copy of docket entries mailed to James C. Chute, Clerk of the Law Court. Copies of notice and docket entries mailed to Counsel of Record. Certificate of Service filed. Transcript Order filed. . Copies to counsel and Wendy Ambrose, reporter.
June 20	LAW.

July 1	Letter dated 7/2/96 from James C. Chute. Docket No. ARO-96-76 has been assigned... clerk must transfer original record as soon as possible.and reportet must file the transcript bP August 19, 1996.
July 23	Designation of Contents of Record on Appeal filed by James C Rebekah Benjam. (Copy filed)
July 23	Statement of Points of Appeal filed by James and Rebekah Benjamin. (Copy filed)
August 14	Original file sent to James Chute, Clerk of the Law Court via regular mail. Counsel and Pro Se Parties notified by sending copies of docket entries.

A TRUE COPY
Attest: /s/_____
Asst. Clerk of Courts

STATE OF MAINE
AROOSTOOK ss.

SUPERIOR COURT
Docket No. CV-95

FARID C. BINA,
of Presque Isle,
County of Aroostook,
State of Maine
PLAINTIFF

vs.

COMPLAINT

JAMES BENJAMIN, JR., M.D.
of Prescue Isle,
County of Aroostookl
State of Maine
and

REBEKAH BENJAMIN
of Presuue Isle,
County of Aroostook,
State of Maine
DEFENDANTS

COUNT I
(Account Annexed)

1. Plaintiff is of Presque Isle, County of Arcostook , State of Maine. Plaintiff is a medical doctor doing business as Northern Maine Urologic Surgery.
2. Defendants are of Presque Isle, County of Aroostook State of Maine.
3. Defendants owe Plaintiff the sum of Twenty-Seven Thousand Dollars ($27,000.00) according to the account annexed hereto as Exhibit A.
4. Demand for payment has been made by Plaintiff, but Defendants refuse to pay Plaintiff as demanded.

5. Plaintiff is entitled to judgment in the amount of $27,000.00, interest and costs hereby demands judgment against the Defendants jointly and severally.

WHEREFORE, Plaintiff prays for judgment: upon Count I in the
amount of $27,000.00 against the Defendants jointly
severally, for interest and costs.

COUNT II
(Restitution)

6. Plaintiff repeats the allegations of count I as if set forth at length herein.
7. In October 1993 Defendant James Benjamin sought out

Plaintiff and requested that Plaintiff loan Defendants funds. Plaintiff agreed to loan Defendants funds and issued checks to the Defendants totalling $27,000.00 between October 13, 1993 and March 18, 1994.

8. Defendants individually and jointly endorsed negotiated these instruments and utilized the funds borrowed for their own purposes.
9. Plaintiff has demanded repayment but Defendants have refused to pay Plaintiff the sums borrowed from Plaintiff.
10. The retention of these funds and refusal to repay is unjust enrichment of the Defendants at the expense of Plaintiff.
11. Plaintiff is entitled to restiturion and demands judgment against the Defendants, jointly and together with costs and interest as allowed by law.

WHEREFORE, Plaintiff requests judgment upon Count II in the amount of $27,000.00 against the Defendants, jointly and severally: for costs and interest as allowed by law.

DATED: May 19, 1995

_/s/_____
Richard L. Currier, Esq.
Attorney for Plaintiff

CURRIER & TRASK, P.A.
505 Main Street

Presque Isle, Maine 04
(207) 764-4193

EXHIBIT A

TO: James Benjamin, Jr., M.D. and
Rebekah Benjamin

10/11/93	Check No. 230	$ 5,000.00
11/16/93	Check No. 278	$ 5,000.00
01/14/94	Check No. 352	$ 4,000.00
02/07/94	Check No. 388 . . .	$ 4,000.00
02/25/94	Check No. 404	$ 4,000.00
03/18/94	Check No. 438	$ 5,000.00

TOTAL DUE $ 27 000 00

STATE OF MAINE
AROOSTOOK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-95-110

FARID C. BINA
Plaintiff and
Cross defendant

v.

JAMES BENJAMIN JR. M.D.
Defendant and

ANSWER, SPECIAL DEFENSES, CROSS COMPLAINT FOR SLANDER

Cross-Plaintiff

JOINT
VENTURE AND
FRAUD AND DECEIT

and

REBEKAH BENJAMIN
Defendant and
Cross-Plaintiff

Defendant, Rebekah Benjamin, appears Pro Se and answers Plaintiff's Complaint as follows:

COUNT 1

1. Answering Paragraph 2 of Count 1, Defendant denies the allegation that she is of Presque Isle, County of Aroostook, State of Maine.
2. Answering Paragraph 3 of Count 1, Denfendant denies generallyand specifically, all and single, each and every allegation therein contained, including the annexed "Exhibit A" as well as any expressed or implied assertion that an account relation existed between Plaintiff and Defendant or Defendants.
3. Answering Paragraph 4 of Count 1 Defendant denies generally and specifically, all and single, each and every allegation therein contained.
4. Answering Paragraph 5 of Count 1, Defendant denies generally and specifically, all and single, each and every allegation therein contained.

WHEREFORE, Defendant prays that Plaintiff takes nothing by reason of Count1, and that he be dismissed hence with his costs.

COUNT 2

1. Answering Paragraph 6 in Count 2, Defendant hereby repeats and re-alleges the denials and responses of Count 1 of her answer as if repeated word for word.

2. Answering Paragraph 7 of Count 2. Defendant denies generally and specifically, all and single, each and every allegation therein contained. Defendant further alleges that as related to time and places alleged by Plaintiff, and as to conduct with and by Plaintiff, a principal and Agency relationship between Defendants, and each of them, did not exist. Defendant further denies that Plaintiff agreed to loan her the funds, or issued her funds pursuant to an agency relationship or as a debtor-creditor.

3. Answering Paragraph 8 of Count 2, Defendant, Rebekah Benjamin, denies that, "Defendants individually and jointly endorsed and negotiated these instruments and utilized the funds borrowed for their own purposes" as alleged by Plaintiff. Defendant, Rebekah Benjamin, further denies that she "individually...endorsed and negotiated these instruments and utilized the funds borrowed for"...her"...own purposes." Defendant further alleges that whatever instruments she endorsed and negotiated, and whatever funds she utilized were not borrowed from Plaintiff as alleged by him, but were transferred and used for Plaintiff's own purposes and interest in a joint-venture at his direction, and pursuant to his orders.

4. Answering Paragraph 9 of Count 2, Defendant denies generally and specifically, all and single, each and every allegation therein contained.

5. Defendant answers Paragraph 10 of Count 2 as follows:

a) Defendant denies that she received funds from Plaintiff that she promised to repay,

b) Defendant further states that she has never been asked to either pay or "repay" funds to plaintiff, and she thus denies the said allegation, and

c) Defendant therefore denies generally and specifically, all and single, each and every allegation in Paragraph 10 that alleges "unjust enrichment of Defendants at the expense of Plaintiff."

6. Answering Paragraph 11 of Count 2, Defendant denies generally and specifically, all and single, each and every allegation therein contained.

WHEREFORE, Defendant prays that Plaintiff takes nothing by reason of Count 2 and that he be dismissed hence with his costs. For a separate and further defense, Defendant alleges as as follows:

1. That at all times herein mentioned Defendant, Rebekah Benjamin, was of the County of Aroostook, State of Maine.

2. That at all times herein mentioned, "Plaintiff is of Presque Isle. County of Aroostook, State of Maine."

3. At the time and place of the formulation and execution of the purported "loan" and "account" set forth in the Complaint on file herein, Defendant and Plaintiff did not enter and never have at any time or place entered into a debtor-creditor agreement was an agreement to transfer and advance money for a medical If there was any agreement at all between the parties, it was an agreement to transfer and advance money for a medical venture. The alleged loan-account agreement did not and does not

contain the essential characteristics of a debtor-creditor agreement via a principal-agent relationship in that:

a) Plaintiff Bina drafted each and every one of the six (6) instruments that he predicates his"loan-account" upon a Plaintiff's Exhibit A:

1. Each check is given for good and sufficient legal consideration.

2. Three checks are unconditionally negotiated to Rebekah Benjamin, a Defendant herein.

3. Three checks are unconditionally negotiated to James Benjamin, Jr., M.D., a Defendant herein.

4. All six (6) instruments do not discuss the transactions as "loans", either singularly or collectively.

5. All six (6j instruments do not state or show a Principal Agent relation between Defendants Rebekah Benjamin and Dr. JamesBenjamin, Jr.

6. Plaintiff's undisclosed intentions are not binding on Defendants, or either of them.. All the documents were prepared by Plaintiff, who expressed his intention to negotiate valid instruments. He cannot now now. nor by subsequent writing, change or abrogate the clear and express terms of six valid documents by the afterthought of a "loan-account"

7. The instrument of February 24, 1994, clearly states that the instrument is an "advance," not a loan.

4. There is not an independent allegation of an account stated. The mere attachment of six (6) instruments each of which states legal purposes, cannot be used by Plaintiff to support a bootstrap argument.

5. There must be an independent showing of a debtor-creditor relation before "Exhibit A. can support an account theory. "Exhibit A" does not allege a debt and mere demand for "payment" does not allege a debt when annexed Support exhibits show valid " unconditional instruments drawn by Plaintiff.

6. There was no intent on the part of Defendant, either jointly, or severally; to form a debtor-creditor, account-stated, or principal-agency relationship or agreement with Plaintiff for a " loan, " "account . "

WHEREFORE, Defendant Prays that Plaintiff takes nothing by reason of his Complaint and that he be dismissed hence with his costs.

SPECIAL DEFENSES

Further, and in addition to the above mentioned defenses, Defendant alleges the following defenses:

FIRST SPECIAL DEFENSE

Plaintiff does not state a claim upon which relief can be granted in Count 1.

SECOND SPECIAL DEFENSE

Plaintiff does not state a claim upon which relief can be granted in Count 2

THIRD SPECIAL DEFENSE
FRAUDULENT REPRESENTATION

At the time Defendant endorsed and negotiated the instruments numbered 230, 278 and 352, as alleged in Plaintiff's Complaint. Defendant reasonably believed the instruments were checks given far goad and sufficient consideration, and were by Plaintiff's statement "an investment for a medical venture." Defendant did not rely on the alleged claim of a "loan" or "account". Plaintiff assured Defendant that the instruments represented venture share capital. As a result of the false and fraudulent representations of Plaintiff described above, Defendant did not know the uncommunicated intentions of Plaintiff; nor did she know the alleged nature of the claim, and was thus induced sign and negotiate the said instruments. Had Defendant known the true nature of Plaintiff's uncommunicated intentions, Defendant would not have signed or negotiated the instruments.

FOUR TH SPECIAL DEFENSE
STATUTE OF FRAUDS SPECIAL

Counts 1 and 2 of Plaintiff's Complaint are alleged contract obligations. The alleged "account-loan" obligation is not in writing. Under Title 33, Chapter 3, Section 51, of the Maine General Statutes, a writing is required to charge any person upon any special promise to answer for the debt, default or misdoings of another. Further, Plaintiff's Complaint is bad because the allegations do not allege that the loan agreement can be performed within one year from the making thereof.

FIFTH DEFENSE
ESTOPPEL SPECIAL

The facts are alleged by Plaintiff, that he. Farid C. Bina. issued unconditional checks to.Defendants on conduct amounting

to false representation andconcealmentofmaterialfacts of his purpose.

Plaintiff intended and expected Defendant to act upon Plaintiff's conduct. Plaintiff had both actual and constructive knowledge of his real facts and intentions, Defendant did not have knowledge of an "account" or "loan." When the checks were drawn, Plaintiff stated that the checks were or "medical venture share capital."

Defendant relied in good faith upon the conduct and statements of Plaintiff. Defendant endorsed and negotiated the said checks numbered 230, 278 and 352 as a result of Plaintiff's conduct and statements. The funds were used to finance.in part, Plaintiff's share in a medical care facility. Defendant believed Plaintiff's representations, and acted thereon. Because of the false representations and assurances made by Plaintiff as to his purpose and intent, he should be estopped from reputiating and disaffirming the purpose of said checks.

SIXTH SPECIAL DEFENSE

ABUSE OF PROCESS

For a further and separate defense Defendant alleges that Plaintiff's action is without probable cause, on a pretended and unfounded claim against Defendant,

In furtherance of Plaintiff's design to harass and maliciously injury Defendant. and for the purpose of preventing Defendant from using her Real Property and Personal Property, Plaintiff filed with the Clerk of the Court an Affidavit for, and an undertaking [Trustee Process] on attachment, seeking a writ of attachment authorizing Sheriffs of the County and State to attach and keep safely all property within the County not exempt from execution, or so much thereof as might be sufficient the amount

alleged to be due on the claim in the action. Defendant further alleges that she at no time was indebted

to Plaintiff. Plaintiff's action was instituted and the writ of attachment is sought by Plaintiff maliciously and without probable cause for the purpose of preventing the sale and use of her property and for the purpose of harassing, annoying and injuring Defendant; and to wrongfully extort money from Defendant

On the same day that Plaintiff commenced the action, Plaintiff maliciously and without probable cause, caused a summons to be issued and to be served on Defendant, requiring Defendant to answer the Complaint. Defendant hereby Appears and defends the said action

Defendant has constant and continuous need to use her property. But, in consequence of the commencement of this proceeding, Defendant has been prevented from use of her property. By reason of the wrongful and malicious act of Plaintiff, Defendant has been damaged.

SEVENTH SPECIAL DEFENSE

PAYMENT

Defendant further alleges that after she endorsed and negotiated the checks as claimed by Plaintiff, and that upon his advice and at his direction, she paid the funds into his medical venture as his share capital, and not as a "loan" or as an "account."

CROSS-COCOMPLAINT , SLANDER

COUNT I

1. At all times mentioned, Cross-Plaintiff/Defendant, Rebekah Benjamin, was a resident of the City of Caribou. Aroostook County. State of Maine, engaged in conducting a business of providing medical art to Physicians in the cities of Presque Isle and Caribou. Maine, and, up to the time of the commission of the grievandes complained of in this pleading, had maintained a good reputation for skill in the conduct of such art business.

2. Cross-Defendant at all times mentioned has been, and now is, a resident of Presque Isle, Aroostook County, State of Maine, and the owner of a medical-practice office in Presque Isle, Maine. Cross-Plaintiff and Cross-Defendant at all times mentioned have been, and now are respectively producer and consumer of art for physicians.

3. On May 19, 1995, at Caribou, Maine, Plaintiff/Cross-Defendant, filed in the Superior Court. in the presence of the Clerk, and published in the news media, and in the presence of other persons whose names are unknown to Cross-Plaintiff, maliciously and with intent to cause belief that Cross-Plaintiff, because of dishonesty was an unfit person to engage in the art business, and pursuant to preconceived policy and intent to injure Cross-Plaintiff in business and in reputation, said of and concerning Cross-Plaintiff, the following: "Defendant James Benjamin sought out Plaintiff and requested that Plaintiff loan Defendants funds..." "Plaintiff...in good faith... in an effort to assist the Defendants, who were then claiming to be impoverished and in need of financial assistance," "...loaned Defendants $27,000.-00."

4. The persons in whose presence these statements were made believed that Cross-Defendant intended to charge

Cross-Plaintiff with being dishonest in business dealings, and with having engaged in "...unjust enrichment of the Defendants at the expense of ... Plaintiff..." Dr. Bina by keeping $27,000.00 of money due him.

5. Each and all of the statements of Cross-Defendant were and are false and untrue and were made by Cross-Defendant for the purpose of and pursuant to a preconceived policy and intent of injuring Cross-Plaintiff in the community in which Cross-Plaintiff: resides, and the statements did injure the business of Cross Plaintiff and injured Cross-Plaintiff in person standing, reputation, and credit in the community.

6. By reason of the untrue, false and malicious statements Of Cross-Defendant, Cross-Plaintiff suffered damage by reason of injury to her art business.

7. By reason of the false, malicious and untrue statements Of Cross-Defendant, Cross-Plaintiff suffered damage by reason of injury to her business reputation and standing in the community in which Cross-Plaintiff resides and conducts business.

WHEREFORE Cross-Plai ntiff requests judgment upon Count 1 against the Cross-Defendant, for costs, and other further relief.

COUNT 2

JOINT VENTURE

1. Cross-Plaintiff, at all times mentioned in this Cross Complaint, was a resident of Aroostook County, State of Maine. Cross-Defendant is, and at all times mentioned in his Cross Complaint, was a resident of Aroostook County, State of Maine.

2. On or about September 4, 1993, Cross-Defendant, Farid C. Bina approached Rebekah Benjamin at an art show and made arrangement to meet her the following week to discuss a medical venture concerning Dr. Benjamin. Dr. Bina and Cross-Plaintiff did not discuss the venture again until October at which time he issued a check to Rebekah Benjamin for his initial payment into the medical venture. Dr.Benjamin and Cross-Defendant entered into an agreement of joint venture for the purpose of acquiring a suitable property, improving it, and thereafter operating medical practice office thereon. It was further agreed that Cross-Defendant would advance the funds necessary for upstart costs and that Dr. Bina and Dr. Benjamin would occupy the premises and pay a reasonable rent therefor, and would do the work necessary to improve the same, and furnish, staff and provide physician-services on the premises, and would share the operating expenses equally including the monthly rental.

3. Pursuant to the agreement, Dr, Bina advanced the amount of $27,000.00 for initial upstart costs. The first $14,000.00 was paid to Rebekah Benjamin. Dr. Bina directed her to invest the money as his share. The property is located in Aroostooli County, State of Maine, and described as follows: A medical office suite at 1 Hatch Drive, City of Caribou.

4. Dr. Benjamin entered into a ten year lease-rental agreement for the medical offices and arranged to have the lease taken in his name.

5. Thereafter, Dr. Benjamin occupied the property and made various improvements, acquired furnishings and staffed the medical offices pursuant to their agreement. Dr. Benjamin advanced medical skill and labor and

materials of the reasonable value of $50.000.00 towards the development of the medical practice. Dr. Benjamin initially occupied suite number 150, a two physician office, at a cost of $1,000.00 per month on a ten year leasehold valued at $120.000.00. Dr. Bina did not invest additional money and in June, 1994. Dr. Benjamin was forced to down-size the venture, by moving to a smaller office, Suite 120.

6. Dr. Benjamin continues to occupy the property for the ten Year leasehold. Cross-Plaintiff has made demand upon Cross-Defendant, that he. Cross-Defendant occupy and use the leased facilities but said Cross-Defendant has failed and refused to occupy the facilities. On or about February 15, 1995, he stated as follows: "I had hoped to proceed with the venture, but due to bad investments I am unable to. In answer to your question about meeting, I think we can meet in about forty-five days." Cross-Plaintiff, Rebekah Benjamin, then informed Dr. Bina that she had been ordered by the Court to give his name to The Aroostook Medical Center as one of the twenty-one persons who informed her about what the Aroostook Medical Center was doing to Dr. Benjamin in a related medical case. Since receiving the foregoing information, Cross-Defendant, Dr. Bina, has behaved Strangely toward Cross-Plaintiff, and on May 19. 1995, he filed suit against Cross-Plaintiff, in which he alleged that his checks were for "loans", and he did not mention his investments; and, he still fails and refuses to further participate in the venture.

8. Cross-Plaintiff has no adequate remedy at law.

WHEREFORE, Cross-Plaintiff prays:

a) For an accounting of Cross-Defendants activity and and reasons for his not further participating in the venture as alleged herein.

b) For an order of this Court compelling Cross-Defendant to further invest such sums as shall be due on the leasehold interest from December 1993.

c) For Cross-Plaintiff's costs of suit herein incurred, and

d) For such other and further relief as the Court deems proper.

COUNT 3

FRAUD AND DECEIT

1. Cross-Plaintiff, at all times mentioned in this Cross Complaint, was a resident of Aroostook County, State of Maine.

2. Cross-Defendant is, and at all times mentioned in this Cross-Complaint, was a resident of Aroostook County, State of Maine.

3. Between October 13, 1993 and January 14, 1994, Cross Defendant drew and delivered to Cross-Plaintiff instruments 388, 404 and 438, as alleged in Cross-Defendant's Complaint herein. During the course of these instruments, Cross-Defendant represented to Cross-Plaintiff that the checks were to be used as an investment for his share in a medical venture with Dr. Benjamin.

4. The representations made above were false when Cross-Defendant made them in that Cross-Defendant subsequently claimed the said instruments were made as "loans" to Cross-Plaintiff.

5. Cross-Defendant knew the representation were false when Cross-Defendant made them in that he did not record any limitations on the checks, nor did he extend a written underlying contract, nor did he execute a promissory note to secure a loan.

6. Cross-Deftndant made the representation mentioned above with the intent and for the purpose of deceiving Cross-Plaintiff and to induce Cross-Plaintiffinto relying on the representations.

7. Cross-Plaintiff in reliance on the investment repre-sentations mentioned above. as induced to endorse and nego-tiate the above named checks.

8. Cross-Plaintiff's reliance on the representatios above was reasonable under the circumstances in that the checks did not state conditions, nor was there a contemporaneous agreement for a "loan" or an "account."

9. As a direct and proximate result of the conduct of Cross-Defendant as described above. Cross-Plaintiff was damaged in the amount of $13,000.00, as special damages and additional general damages.

WHEREFORE, Cross-Plaintiff requests judgment upon Count 3 against Cross-Defendant, for costs of suit, dnd for such other and further relief as is embraced within in the facts and law of this case.

Dated at Ann Arbor, Michigan, June 9,1995.

Rebekah Benjamin Pro Se
1407 Wisteria Drive
Ann Arbor, Michigan 48104
(313) 747-7367

STATE OF MAINE
AROOSTOOK. ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-95-110

FARID C. BINA
Plaintiff and
Cross-Defendant

v.

JAMES BENJAMIN, JR., M.D.,
Dendant Cross-Plaintiff

ANSWER, SPECIAL DEFENSES, CROSS-COMPLAINT FOR SLANDER JOINT VENTURE , FRAUD DECEIT

REBEKAH BENJAMIN,
Defendant,Cross-plaintiff

Defendant, James Benjamin, Jr., M.D., appears Pro Se and answers Plaintiff's Complaint as follows:

COUNT 1

1. Answering Paragraph 2 of Count 1, Defendant denies the allegation that he is of Presque Isle, but admits he is a resi-dent of the County of Aroostook and the State of Maine.
2. Answering Paragraph 3 of Count 1, Defendant denies generally and specifically, all and single, each and every allegation therein contained, including the annexed "Exhibit A" as well as any expressed or implied assertion

that an account relation existed between Plaintiff and Defendant or Defendants.

3. Answering Paragraph 4 of Count 1, Defendant denies generally and specifically, all and single, each and every allegation therein contained.
4. Answering Paragraph 5 of Count 1, Defendant denies generally and specifically, all and single, each and every allegation ii therein contained. WHEREFORE, Defendant prays that Plaintiff takes nothing by reason of Count 1, and that he be dismissed hence with his costs.

COUNT 2

1. Answering Paragraph 6 in Count 2, Defendant hereby repeats and re-alleges the denials and responses of Count 1 of his answer as if repeated word for word.
2. Answering Paragraph 7 in Count 2, Defendant denies generally and specifically, all and single, each and every allegation therein contained. Defendant further alleges that as related to times and places alleged by Plaintiff, and as to con-duct with and by Plaintiff, a Principal and Agency loan relation-ship between Defendants, and each of them, did not exist. Defendant further denies that Plaintiff agreed to loan him the funds, or issued him funds pursuant to an agency relationship or as a debtor-creditor.
3. Answering Paragraph 8 in Count 2, Defendant, James Benjamin, Jr., M.D., denies that, "Defendants individually and jointly endorsed and negotiatedthese instruments and utilized the funds borrowed for their own purposes" as alleged by Plaintiff.

Defendant further denies that he "individually.. .endorsed and negotiated these instruments and utilized the funds borrowed

for"...his "...own purposes." Defendant further alleges that whatever instruments he

endorsed and negotiated, and whatever funds he utilized were not borrowed from Plaintiff as Plaintiff alleges, but were transferred and used for Plaintiff's own purposes and interest in a joint-venture at Plaintiff's direction, and pursuant to his orders.

4. Answering Paragraph 9 in Count 2, Defendant denies generally and specifically, all and single, each and every allegation
.therein contained.

5. Defendant answers Paragraph 10 in Count 2 as follows:

   a) Defendant denies that he received funds from Plaintiff that he promised to repay.

   b) Defendant further states that he has never been asked to either pay or "repay" funds to Plaintiff, and he thus denies the said allegation, and

   c) Defendant therefore denies generally and specifically, all and single, each and every allegation in Paragraph 10, that alleges "unjust enrichment of Defendants at the expense of Plaintiff."

6. Answering Paragraph 11 in Count 2, Defendant denies generally and specifically, all and single, each and every allegation therein contained.

WHEREFORE Defendant prays that Plaintiff takes nothing by reason of Count 2, and that he be dismissed hence with his costs.

For a separate and further defense, Defendant alleges as follows:

1. That at all times herein mentioned Defendant, James Benjamin, Jr., M.D., was and is a resident of Caribou, County of Aroostook, State of Maine,
2. That at all times herein mentioned, Plaintiff is of Caribou, County of Aroostook, State of Maine.
3. At the time and place of the alleged formulation and execution of the purported "loan" and "account" agreement set forth in the Complaint on file herein, Defendant and Plaintiff did not enter and have never at any time or place entered into a debtor-creditor agreement.

If there was any agreement at all between the parties, it was an agreement to transfer and advance money for a medical venture.

The alleged loan-account agreement did not and does not contain the essential characteristics of a debtor-creditor agreement via a principal-agent relationship in that:

a) Plaintiff Bina drafted each and every one of the six (6) instruments that he predicates his loan-account upon as Plain-

Plaintiff's "Exhibit A":

1. Each check is given for good and sufficient consideration.
2. Three checks are unconditionally negotiated to Rebekah Benjamin, a Defendant herein.
3. Three checks are unconditionally negotiated to James Benjamin, Jr., M.D., a Defendant herein.
4. All six (6) instruments do not discuss the transactions as 'loans", either singularly or collectively.
5. All six (6) instruments do not state or show a Principal-Agent relation between Defendants, Rebekah Benjamin and James Benjamin, Jr., M.D., and Plaintiff Bina.
6. Plaintiff's undisclosed intentions are not binding on Defendants or either of them. All instruments were

prepared by Plaintiff, who expressed his intention to negotiate valid instruments. He cannot now, orally, nor by subsequent writing, change or abrogate the clear and express terms of six (6) valid documents, by the afterthought of a "loan," "account. "

7. The instrument of February 24, 1994, clearly states that the instrument is an "advance," not a loan.

4. There is not an independent allegation of an account-stated. The mere attachment of six (6) instruments each of which :state legal purposes. cannot be used by the Plaintiff to support a boot-strap argument.

5. There must be an independent showing of a debtor-creditor relation before "Exhibit A" can support an account theory. "Exhibit A" does not allege a debt, and mere demand for "payment" does not allege a debt when the annexed support exhibits show valid unconditional instruments drawn by Plaintiff.

6. There was no intent on the part of Defendants, either jointly, or severally, to form a debtor-creditor, account-stated or principal-agency relationship or agreement with Plaintiff for a "loan," "account."

WHEREFORE, Defendant prays that Plaintiff takes nothing by
of his Complaint and that he be dismissed hence with his costs.

SPECIAL DEFENSES

Further, and in addition to the above mentioned defenses, Defendant alleges the following defenses:

First Special Defense

Plaintiff does not state a claim upon which relief can be granted in Count 1.

Second Special Defense

Plaintiff does not state a claim upon which relief can be granted in Count 2.

Third Special Defense

Fraudulent Representations

At the time Defendant endorsed and negotiated the instruments numbered 352. 388. 404 and 438, as alleged in Plaintiff's Complaint, Defendant reasonably believed the instruments were checks given for good and sufficient consideration, and were by Plaintiff's statement, "an investment for a medical venture." Defendant did not rely on the alleged claim of a "loan" or "account". Plaintiff assured Defendant that the instruments represented venture share capital. As a result of the false and fraudulent representations of Plaintiff described above, Defendant did not know the uncommunicated intentions of Plaintiff; nor, did he know the alleged nature of the claim. and was induced to sign and negotiate the instrument. Had Defendant known the true nature of Plaintiff's Uncommunicated intentions, Defendant would not have signed or negotiated the instruments.

Fourth Special Defense

Statute of Frauds

Counts 1 and 2 of Plaintiff's Complaint are alleged contract obligations. The alleged account loan obligation is no in writing. Under Title 33, Chapter 3, Section 51, of Maine General Statutes, a writing is required to charge any personupon any special promise to answer for the debt, default or misdoings of another. Further, Plaintiff's Complaint is bad because the allegations do not allege that the loan agreement can be performed within one year from the making thereof.

Fifth Special Defense

The facts are alleged by Plaintiff, that he, Farid C. Bina issued unconditional checks to Defendants on conduct amounting to false representation ans concealment of material facts of: his purpose

Plaintiff intended and expected Defendant to act upon Plaintiff's conduct.

Plaintiff had both actual and constructive knowledge of an "account" or "loan". When the checks were drawn, Plaintiff Stated thatthe checks were for "medical venture share capital." Defendant relied, in good faith, upon the conduct and statements of Plaintiff. Defendant endorsed and negotiated the said checks numbered 352. 388. 404 and 438 as a result of Plaintiff's conduct and statements. The funds were used to finance in part Plaintiff's share in a medical care facility. Defendant believed Plaintiff's representation, and acted thereon.

Because of the false representations and assurances made by Plaintiff as to his purpose and intent, he should be estopped from repudiating and disaffirming the purpose of said checks. By reason of the wrongful and malicious act of Plaintiff. Defendant has been damaged.

Sixth Special Defense

Payment

Defendant further alleges that after he endorsed and negotiated the checks as claimed by Plaintiff, and that upon his advice and at his direction Defendant paid the funds into Plaintiff's medical venture as his share capital, and not as a "loan" or as an "account."

Seventh Special Defense

Abuse of Process

For a further, and separate defense, Defendant alleges that Plaintiff's action is without probable cause, but based on pretended and unfounded claim against Defendant.In furtherance of Plaintiff's design to harass and maliciously injure Defendant, and for the purpose of preventing Defendant from using his Real Property and Personal Property, Plaintiff filed with the Clerk of the Court an Affidavit for, and an undertaking [Trustee Processl on attachment, seeking a writ of attachment authorizing Sheriffs of the County and State to attach and keep safely all property within county, not exempt from execution, or so much thereof as might be sufficient to satisfy the amount alleged to be due on the claim in the action. Defendant further alleges that he at no time, was or is in-debted to Plaintiff. Plaintiff's action was instituted and the writ of attachment is sought by Plaintiff maliciously and without probable cause for the purpose of preventing the sale and use of his property and for the purpose of harassing, annoying; and injuring Defendant and to wrongfully extort money from Defendant. On the same day that Plaintiff commenced the action, Plaintiff maliciously and without probable cause. caused a summons to be issued and to be served on Defendant requiring Defendant to answer the Complaint. Defendant hereby appears, Answers and defends the said action.Defendant has constant and continuous need to use his property But, in consequence of the commencement of this proceeding,

Defendant has been prevented from use of his property. By reason of the wrongful and malicious act of Plaintiff, Defendant has been damaged.

CROSS-COMPLAINT

SLANDER

COUNT 1

1. At all mentioned, Cross-Complainant/Defendant was and remains a resident of the City of Caribou, Aroostook County, State of Maine, engaged in conducting a medical practice business in the cities of Presque Isle and Caribou, Maine, and, up to the time of the commission of the grievances complained of in Plaintiff's pleading, had maintained a good reputation for skill in the conduct of such practice.

2. Cross-Defendant at all times mentioned has been, and is now, a resident of Presque Isle, Aroostook County, State of Maine, and Fhe owner of a separate medical practice office in Presque Isle, Maine. Cross-Complainant and Cross-Defendant at all times mentioned have been, and now have rival medical practice offices.

3. On May 19. 1995, at Caribou, Maine, Plaintiff/ Cross - Defendant filed in the Superior Court, in the presence of the Clerk, and published in the news media, and in the presence of other persons whose names are unknown to Cross-Plaintiff, maliciously and with intent to Cause belief that Cross-Plaintiff, because of dishonesty, was an unfit person to engage in medical business, and pursuant to a preconceived policy and intent to injure Cross-Plaintiff in business and in medical reputation, said of and concerning Cross-Plaintiff the following: "Defendant James Benjamin sought out Plaintiff and requested that Plaintiff loan Defendant funds..."" Plaintiff...in good faith... in an effort to assist the Defendants, who were:then claiming to be

impoverished and in need of financial assistance." loaned Defendants.,, $27,000.00"

4. The persons in whose presence these statements were made believed that Cross-Defendant intended to charge Cross-Plaintiff with being dishonest in medical business dealings, and with having engaged in "...unjust enrichment of the Defendants at the expense of..: Plaintiff...," Dr. Bina by keeping $27,000.00 of money due him.

5. Each and all of the statements of Cross-Defendant were and are false and untrue and were made by Cross-Defendant for the I purpose of and pursuant to a preconceived policy and an intent to injure Cross-Plaintiff in he community in which Cross-Plaintiff resides, and the statements did injure the business , reputation and credit in the community.

6. By reason of the false, malicious and untrue statements of Cross-Defendant, Cross-Plaintiff suffered damage by reason of injury to his medical-practice business.

7. By reason of the false, malicious and untrue statements of Cross-Defendant, Cross-Plaintiff suffered damage by reason of injury to his medical reputation and standing in the community In which Cross-Plaintiff resides.

WHEREFORE, Cross-Complainant requests judgment upon Count 1
against the Cross-Defendant, for costs and other and further relief.

COUNT 2

JOINT VENTURE

1. At all times mentioned, Cross-Plaintiff, James Benjamin,M.D., and Cross-Defendant, Farid C. Bina were residents ofthe City of Presque Isle, County of Aroostook, State of Maine. Cross-Plaintiff is now a resident of the City of Caribou and Cross-Defendant still resides in the City of Presque Isle.

2. On or about September 4, 1993, Cross-Defendant, Farid C. Bina approached Rebekah Benjamin at an art show and made arrangements to meet her the following week to discuss a joint medical venture with Dr. Benjamin. Dr. Bina and Rebekah Benjamin did not discuss the venture again until October at which time Bina issued a check to Rebekah Benjamin for his initial payment into the medical venture. Cross-Plaintiff and Cross-Defendant entered into an agreement of joint venture for the purpose of aquiring a suitable property, improving it and thereafter operating a medical-practice office thereon. It was further agreed that Cross-Defendant would advance the funds necessary the start costs, and that Cross-Plaintiff and Cross-Defendant would occupy the premises; and pay a reasonable rent therefor, and would do the work necessary to improve the same, and furnish, staff and provide physician services on the premises, and would share the operating expenses equally including the monthly rental.

3. Pursuant to the agreement, Cross-Defendant advanced the amount of $27,000.00 for initial lease payments and upstart costs. The property is located in Aroostook County, State of Maine, and described as follows: A Medical-office suite at 1 Hatch Drive, City of Caribou.

4. Cross-Plaintiff entered into a ten year lease rental agreement for the medical offices and arranged to have the lease taken in his name.
5. Thereafter, Cross.-Plaintiff occupied the property and made various improvements, aquired furnishings and staffed the ii medical offices pursuant to their agreement. Cross-Plaintiff advanced medical skill and labor and materials of the:reasonable value of $50,000.00 towards the development of the medical it practice. Cross-Plaintiff initially occupied suite number 150, a two physician office, at a cost of $1,000.00 per month on a ten year leasehold valued at $120,000.00. Cross-Defendant failed and refused to meet his end of the bargain, and June 1994 Cross-Plainiff was forced to down-size the venture by moving to a smaller suite, office number 120.

6. Cross-Plaintiff continues to occupy the same property for the ten year leasehold.

7. Cross-Plaintiff has made demand updn Cross-Defendant that he, Cross-Defendant, occupy and use the leased facilites, but said Cross-Defendant has failed and refused, and still fails and refuses to further participate in the venture.

8. Cross-Plaintiff has no adequate remedy at law.

WHEREFORE, Cross-Plaintiff prays:

a) For an accounting of Cross-Defendant's activity and reasons for his not further participating in the venture as alleged herein.
b) For an order of this Court compelling Cross-Defendant to pay to Cross-Plaintiff such sums as shall be due on the lease hold interest from December, 1993.
c) For Cross-Plaintiff's costs of suit herein incurred,and

d) For such other and further relief as the Court deems proper.

COUNT

FRAUD AND DECEIT

1. Cross-Plaintiff is, and at all times mentioned in this Cross-Complaint was, a resident of Aroostook County, State of Maine.
2. Cross-Defendant is, and at all times mentioned in this Cross-Complaint was, a resident of Aroostook County, State of Maine.
3. Between October 13, 1993 and January 14, 1994, Cross-Defendant drew and delivered to Cross-Plaintiff instruments 388, 404 and 438, in Cross-Defendant's Complaint herein. During the course of these instruments, Cross-Defendant represented to Cross-Plaintiff that the checks were to be used as an investment for his share in their joint venture.
4. The representations mentioned above were false when Cross-Defendant made them in that Cross-Defendant subsequently claimed the said instruments were made as loans to Cross-Plaintiff.
5. Cross-Defendant knew the representations were false when Cross-Defendant made them in that he did not record ant limitations on the checks, nor did he extend a written underlying contract, nor did he execute a promisary note to secure a loan.
6. Cross-Defendant made the representations mentioned above with the intent and for the purpose of deceiving Cross-Plaintiff and to induce Cross-Plaintiff into relying on the representations.
7. Cross-Plaintiff, in reliance on the representations mentioned above, was induced to endorse and negotiate thew aboved named checks.

8. Cross-Plaintiff's reliance on the representations above was reasonable under the circumstances in that the checks id not state conditions, nor was there a contemporaneous agreement for a loan or an account.
9. As a direct and proximate result of the conduct of Cross-Defendant Bina, as described above, Cross-Plaintiff Benjamin was damaged in the amount of $13,000.00

WHEREFORE, Cross-Plaintiff requests judgment upon Count 3 against Cross-Defendant for costs of suit, and for such other and further relief as is embraced within the facts and law of this case.

DATED: At Craibou Maine this Ninth day of June 1995.

/s/_____
James Benjamin Jr., M.D.

171 Academy Street
Presque Isle Maine, 04769
(207) 764-6808

STATE OF MAINE

AR00STOOK, ss.

Superior Court
Civil Action
Docket No. Cv-95-110

FARID C. BINA,
Plaintiff and
Cross-Defendant

and

JAMES BENJAMIN, JR., M.D.,
Defendant and
Cross-Plaintiff

REBEKAH BENJAMIN,
Defendant and Cross-Plaintiff

MOTION FOR ATTACHMENT

BEFORE:

Honorable Paul T. Pierson, Justice of the Superior Court

Aroostook County Courthouse
240 Sweden Street
Caribou, Me 04736

June 21, 1995
9:05 a.m.

APPEARANCES:

For the Plaintiff: Norman Trask, Esq.

For the Defendant: James Benjamin, Jr., Pro Se
Peter Kelley, Esq.

Wendy S. Ambrose
Official Court Reporter

TRANSCRIPT OF PROCEEDINGS

(The following proceeding was held before Honorable Paul T. Pierson, Justice, at the Aroostook County Courthouse, Caribou, Maine, on June 21, 1995, commencing at 9:05 a.m.)

THE COURT: Docket Number 95-110, Bina versus Benjamin. Parties ready for a hearing on motion for attachment3

MR. TRASK: Plaintiff is, your Honor.

MR. KELLEY: Your Honor, I just was contacted late yesterddy by Rebakah Benjamin, one of the

co-defendants. I do not represent Dr. Benjamin, and I've just submitted a letter for limitedpurpose of the motion only to represent her.

THE COURT: Mm- hm .

MR. KELLEY: Um, it's my understanding, I talked to Rick Currier this morning on the phone, and he indicated there's already been motions filed to continue and those have been denied.

THE COURT: Right.

MR. KELLEY: So I only got word on this late yesterday afternoon and I'm here on her behalf only and I think we can proceed ahead.

THE COURT: Okay. Thank you, Mr. Kelley. The parties have submitted written motions and written responses and affidavits that the parties wish to supplement what they filed. This is a fairly basic and fundamental issue before the Court on motion for attachment. So if you wish to have further argument, you may be heard.

MR. TRASK: Thank you, your Honor, very briefly. Um, this morning, we submitted new affidavit in support of our motion. There were some allegations made as to alleged inconsistencies in the initial affidavit that was filed. We don't find those allegations to have any basis; but just to clarify the record and.to do away with that issue, we submitted an initial affidavit.

THE COURT: Do you wish to add anything to what -- anything else to what you filed?

MR. TRASK: The only other thing I would add,

your Honor, is that the talk of any kind of joint medical venture doesn't make any sense. We strenuously disagree with that. Dr. Bina has no privileges at Cary. ' He practices in Presque Isle. There is nothing to be gained by this joint venture, and that's something that the Court may consider. Other than what we submitted, I have nothing else to add.

THE COURT: Okay. Thank you. Dr. Benjamin, the record should reflect that Dr. Benjamin is present pro se. Do you wish to be heard?

DR. BENJAMIN: Yes, your Honor. I wish for Attorney Kelley to go first.

THE COURT: Yes. Mr. Kelley, do you wish to go first.

MR. KELLEY: Yes. I was contacted late yesterday by Mrs. Benjamin for whom I've entered a limited appearance and was provided last night the documents. I read them over and I think they probably do address everything.

The test, as you know, is now more likely than not. From her perspective only, there is no evidence of any loan to her or promissory note, no agreement. The defense, again as you already have it, sets forth that apparently there was some sort of business venture between Dr. Bina and Dr. Benjamin that was anticipated. She derived no benefits from this; and we feel as to her, the claim would not prevail because she received no benefits from it.

Three of the checks were made to her and apparently willingly to the vocation of the business facility here in Caribou for the doctors to enter into an office in the St. Peter building behind -- it's here in Caribou. She did not receive the benefits,had no contract with, no promissory note; and on the test that you face of more likely than not as to her, and again this is all set forth, we feel it would fail.

Thank you.

THE COURT: Dr. Benjamin, you wish to be heard?

DR. BENJAMIN: Yes, your Honor, thank you. Um, on the -- as Attorney Kelley stated, the primary thing is whether the plaintiff will be more likely than not to go forward with whether this was a loan or whether this was an investment.

THE COURT: Right.

DR. BENJAMIN: And I allege and I allege very firmly this was most definitely an investment, investment in the joint venture between myself and Dr. Bina. In September of 1993, I sponsored an art show in Presque Isle. Dr. Bina appeared at the art show. We discussed myhypertension center and we described -- discussed going into practice together.

The practice was to be a two-man practice for internal medicine and urology, and we became more focused in our discussions and plans in October. We set upon to find the office in Caribou, two-man office in Caribou. We initially looked at several sites. We discussed -- I went and looked at one site with Dr. Charles Nadeau here in Caribou.

The only unfortunate thing there, Dr. Nadeau, although he wanted to lease the site, he wanted to be in the site along with me. At this time, Dr. Bina had wanted to be a silent partner in this joint venture until things got well-flowing; and in November we did -- we had a line on a place in Caribou at the St. Peter building with Dr. Wingard, two physicians offices, much larger than the office that I had and much larger than the office Dr. Bina had.

Some of the added benefits and what Dr. Pina wanted was a handicapped accessible facility.. At 165 Academy Street. where he currently is in Presque Isle, it is not handicapped accessible; and we both complained many times that our patients who were in a wheelchair and couldn't go up or down the staircase, and I had prior been in the same difficulty and Z had to go to the caretaker to help take the patient up and'down, and we found the facility at Dr. Wingard's to be quite accessible.

Also, there was a surgeon's office, two medical offices, room for expansion, for X rays and laboratories, and we went forward. We went forward with this.

I will be able to show that during the six months period in question, October, November, and December of 1993, and in January, February, and March of 1994, that I spent in expenses more than $85,000, during the time that Dr. Bina put forth into the joint venture $27,000.

You will also see in the records that I have that my expenses, monthly expenses at the Presque Isle office before Dr. Bina joined me in the joint venture, were $5,000 or $6,000 a month; and after I joined with Dr. Bina, to give you an example, my quarterly report for employee's wages in the last quarter of 1993 were between $8,000 and $9,000 for employee expenses, and the next three quarters it was $30,000. I employed eleven people during that- time period, second time period in question, in anticipation of being joined by Dr. Bina to go from his silent partner status to a full partner status; and Dr. Bina pulled out for reasons that only he knows.

I also wish to state that because it is the plaintiff's job to show that this case is more:likely than not to be won-by themself to establish a prima facie case, and they are weak on several points. At no point does Dr. Bina allege that my mother, Mrs. Benjamin, at no point does he actually allege that she borrowed the money from him, because the money was not borrowed. The money was an investment in a joint venture. Although he does put her down in his pleadings and in his Complaint, at no point does he specifically say that she borrowed the money, that she has a date certain as to when it was to be paid. No demand letter has ever been sent to her or me.

If there was a loan in his mind, he did not make us aware that it was a loan, bec$use it was definitely an investment: and I'd say this is a heavily, heavily contested matter. It's not just more likely than not that the plaintiff will win. There is a good chance the plaintiff will not win.

THE COURT: Okay. Thank you, very much. Any response?

MR. TRASK: Um, only to point out, your Honor, that as I understand it, a motion of this type is decided on the affidavits and materials that have been submitted. This is not a testimonial hearing per se, so I ask you to take notice of that point.

THE COURT: Hag either party -- both parties have had an opportunity to submit affidavits, and what I have right now are copies of checks. There are no other writings that either party has to supply this Court with regard to the arrangements regarding this money3

DR. BENJAMIN: No.

MR. KELLEY: No.

MR. TRASK: That's correct, your Honor.

THE COURT: Okay. Thank you. The Court will have to review the documents submitted, and I'11 issue a ruling in writing. Thank you.

MR. TRASK: Thank you, your Honor.

DR. BENJAMIN: Thank you.

THE COURT: Court will be in recess.

(The proceeding was concluded at 9:15 a.m.)

CERTIFICATE

I hereby certify that the foregoing is a correct 14 transcript of my stenographic notes of the proceeding of the above-entitled cause of action.

Dated this 20th day of July, 1995.

/s/_____
Wendy S. Ambrose

PARTIAL TRANSCRIPT OF PROCEEDINGS

(This case came on for trial before Honorable Paul T. Pierson, Justice, and a jury duly impaneled, accepted, and sworn, at the Aroostook County Courthouse, Caribou, Maine, on May 28, 1996. The following are proceedings that were heard on May 30, 1996, commencing at 9:05 a.m.)

THE COURT: Good morning. Be seated, please. You may continue with Dr. Benjamin's cross.

MRS. BENJAMIN: Your Honor, may I ask you a question?

THE COURT: I beg your pardon?

MRS. BENJAMIN: I need to ask you a question.

THE COURT: You may do so.

MRS. BENJAMIN: If a rebuttal witness is called, can I call him as a direct witness?

THE COURT: Yes, you can.

MRS. BENJAMIN: Okay.
(Mrs. Benjamin continued with cross-examination of James Benjamin, Jr.)

(Mrs. Benjamin continued with cross-examination of James Benjamin, Jr.)

JAMES BENJAMIN, JR., M.D., having been duly sworn, was examined and testified as follows:

CROSS-EXAMINATION

BY MRS. BENJAMIN:

Q Um, I don't remember exactly where we left off yesterday, so I'm just going to jump in there. Um, we discussed during the examination by Mr. Currier, he mentioned that he had found out through testimony here that your contract for moneys with TAMC had been terminated. That was the first time he knew about it. Do you remember him saying that?

A Yes.

Q When were they terminated?

A In August of 1992.

Q Was it a direct cut or did it --

A Um, no, it was not a direct cut. In August of -- in August of 1992, the hospital stopped sending me moneys for my practice; but it didn't cut my obligation to the hospital, which was provide care for patients and--

Q Now, did you contact anyone -- we heard yesterday -- and the judge has cautioned me not to duplicate, so I mention this only to put you in perspective -- you heard from Dr. Sorner-- what's his name?

A Somerville.

Q You heard from Dr. Somerville and Dr.--

A Prasanna.

Q --Prasanna, that you had come to them at that time period.

A Yes.

Q Actually, they were not able to tell you the time period; but you know that's when you did talk to them.

A Yes, that is when I did talk to them.

Q Now, after talking to them, what did you then do about that?

A Oh, I then went into serious negotiations with Mr. Jack Ginty and the hospital administrator Mr. Peterson.

Q And how did that turn out?

A Um, after about, let's see, August, September, October negotiations, we were unable to reach -- to reach an agreement, so I terminated a portion of the contract in October and continued in a private practice with a direct financial arrangement with the hospital.

Q Why did the hospital--

MRS. BENJAMIN: Oh, dropped my pen.

THE CLERK: That's okay, I'll get it.

MRS. BENJAMIN: Thank you.

BY MRS. BENJAMIN:

Q Um, when you went to contact them, it did not work out. Did they give you a reason for wanting to terminate?

A Yes, they did.

Q What did they say?

A Um, I was told that -- in July of that year, I had gone on a Continuing Medical Education in Hawaii. That was 1992, and when I -- they had allotted $1,500 for me to go for the C.M.E., Continued Medical Education. It required $3,000 for me to go. When I got back, I was, you know, superchastised about that expenditure of mine for Continuing Medical Education; and I explained that -- that, you know, that's -that was required. A thousand dollars, $1,500, is not enough. That's just about the airfare to get there, but not enough to pay for the hotel. I went through great explanations, and they were completely unreasonable; and because of that point, because of that point, they stopped the moneys and --

Q For the month of August, you did not receive the $17,000 you were supposed to receive?

A That is correct.

Q And from that time on, you received no moneys from the hospital as per your contract with the hospital?

A That is correct.

Q But were you required to maintain your end of the contract?

A Yes, I was.

Q And that required you to be present in Aroostook County?

A Yes, it did.

Q Did it require you to be -- remain on staff there until that contract was up?

A That is correct.

Q Did it require you to maintain an office of your own here?

A Yes, it did.

Q From whom did you get the funds to continue?

A Um, I got the funds from my father. This is in--

Q Starting in --

A I should say family, my father, starting in October of 1992.

Q Until?

A Until -- until I finished my practice here.

Q October of --

A Of 1995, until I finished -- I'm sorry. My father started assisting me in October of 1992 and, um, the assistance continued until October of 1995.

Q Why did you terminate your practice in Aroostook County in October of 1996 (sic)? It's necessary. You must go ahead and tell.

A In May of 1995 of last year, a person who I had felt was a very good friend -- he's sitting in the courtroom, Dr. Bina -- filed a suit against me, the suit that's currently -- I definitely felt stabbed. I felt stabbed in the back; and my father approached me at that time and said, Jim, this is not going to work out, He said, Aroostook County is not going to work out. And so the next logical thing, because I felt my practice and the patients I was treating -it's like you're taking care of a baby. Um, so I wanted to make sure that there was someone to take care of my patients when I left; and I finally was able to find some physicians I could refer the patients to that the patients wanted to go to, and I felt very confident that those physicians could take care of the patients, and I was able to complete that in October of '95, and that's when I closed down my practice.

Q. And you left the state of Maine in January of -

A. '96, January of -- January of '96 is when I left the state of Maine.

Q. Um, are you a board certified internist?

A. Yes, I am a board certified internist from the American Board of Internal Medicine, and I am licensed to practice in four states.

Q. Um, do you maintain those licensees in those states?

A. Um, yes, I do. Yes, I do. Um, yes.

Q. Um, are they all active?

A. No, they are not all active. The current active license is in the state of California.

Q. Why aren't they all active?

A. Well, um, the financial --

Q. Direct --

A. Oh, I'm unable to pay the funds for it.

Q. Um, yesterday, Mr. Currier showed you some newspaper articles,

A. Yes.

Q. And you identified them. You recognize them and you said they were your ads?

A. That is correct.

Q. And he asked you if Dr. Bina's name was on any of these ads.

A. That is correct.

Q. And the answer was no?

A. The answer was no.

Q. Is there a reason why his name was on none of these ads?

A. Yes, there was a reason. Um, the reason was--

Q. What was the reason, if that's the question you want from me.

A. The reason was, um, primarily, Dr. Bina was afraid of the political environment that was occurring at the -- what was being done to me both in the hospital and outside of the hospital; and he, as the pressure mounted more and more, he got more and more afraid about coming forward and associating himself with me and, um, he asked not to be directly linked until he could completely free himself.

Q. Did he ask you that?

A. Um, yes, yes, he-- yes, he did.

Q. Okay. Were there other ads in the paper at the same time?

A. Yes, yes, there were.

Q. Were there conglomerate of ads in the paper at that time?

A. Actually, yes,

Q. One of them -- one of them Dr. Bina referred to

MRS. BENJAMIN: Your Honor, I have another son here.

THE COURT: Mm-hm.

MRS. BENJAMIN: Could he come up and pick these things up for me so I stop having to disrupt the Court?

THE COURT: It's okay.

MRS. BENJAMIN: That's okay for him to come down?

MR. CURRIER: I have no objection if he sits right here with her and helps her with these exhibits, your Honor.

THE COURT: You can take your testimony here if you want.

MRS. BENJAMIN: They may not hear him from up there, and I certainly don't want to disrupt things to the extent that everything has to be --

COURT OFFICER: He's left the courtroom for now and is soon to be back.

MRS. BENJAMIN: My other son? Okay.

BY MRS. BENJAMIN:

Q. In one of those, during Dr. Bina's direct testimony, he referred to an article in the newspaper that had yourself and myself and your father in it.

A. Yes, yes, he did.

Q. I want you to take a look at this and see if this is the article.

A.. Yes, it is.

Q. May I have it back? Now, um, this article was written by (sic) did someone interview you directly?

A. Yes, she did.

Q. And how did you come by this particular copy of this article?

A. Um, that was provided to me by Mr. Currier during his --

Q. During this action?

A. During this legal action, yes.

MRS. BENJAMIN: May I introduce it into evidence?

MR. CURRIER: May I see it, Mrs. Benjamin, please ? I have no objection. Do you have a number that we can put on it? What are we up to?

MRS. BENJAMIN: I haven't put in an item yet, have I?

MR. CURRIER: Do you have a Number 1?

THE CLERK: Okay. That's fine.

DR. BENJAMIN: We haven't put in anything yet, your Honor.

MRS. BENJAMIN: No, we didn't; did we?

DR. BENJAMIN: No, we did not.

MR. CURRIER: Your Honor, I've marked on this Defendant's Exhibit 1, two pages. I have no objection to it being admitted.

MRS. BENJAMIN: You want to look at the rest of these, because there's several of those I want to put in.

MR. CURRIER: Okay,

MRS. BENJAMIN: Should I wait for him?

MR. CURRIER: Go ahead, Mrs. Benjamin. If it's agreeable, I'11 go ahead and mark these 2 through whatever for her.

MRS. BENJAMIN: Okay, Thank you.

THE COURT: I'd ask the jury to take a recess.

(The jury left the courtroom at 9:20 a.m. The following proceeding was held out of the presence of the jury.)

THE COURT: Perhaps it would be useful if we went through what it is you want to prove and what it is you want to introduce and I can be alerted to what your course of procedure is and whether the documents may be admitted by agreement or not.

MRS. BENJAMIN: Oh, okay.

THE COURT: It is not customary that articles from the newspaper are introduced into evidence, and I don't know what the purpose of the article is. The issue in this case is whether or not money was loaned to the -- to Dr. Benjamin or not and whether or not there was a joint venture. So, technically speaking, all that's relevant is information that relates to activities at the time prior to the negotiations and at the time the checks were received. What actually happened after the last check was received, unless it relates to expenditures that he claims he made, are not relevant to the case.

So, I would like at this point for you to just indicate to me what it is you want to introduce and why you want to introduce them and we can determine what's relevant and to save -- I don't want to interrupt you in front of the jury if I can help it so --

MRS. BENJAMIN: Right.

THE COURT: -- so to save that process, um, I would ask you to tell me what it is that you want to question Dr. Benjamin about, what's called an offer of proof; and I will get a sense of where we're going with this.

MRS. BENJAMIN: Okay.

THE COURT: As I indicated to you yesterday, I'm concerned about repetition also because I don't know what you intend to introduce or how you intend to introduce on direct examination; and if information is simply duplicative, it's cumulative

and it won't be admitted. But I do want to know the purpose of all the other documents and why newspaper articles are relevant.

MRS. BENJAMIN: Should I explain?

THE COURT: Yeah. Just, essentially, what I'd like to do is have you explain to me what it is you are going to continue asking Dr. Benjamin about right from now until you're done.

MRS. BENJAMIN: Okay.

THE COURT: Okay?

MRS. BENJAMIN: All right.

THE COURT: All you do is just explain to me. She writes it down. I listen to it, and I'm going to make a determination of what's relevant and what isn't and I will indicate to you what you can ask and what you can't ask. Okay?

DR. BENJAMIN: Your Honor, but the first one right there, that's already been accepted into evidence. He's--

MRS. BENJAMIN: I didn't hear you.

DR. BENJAMIN: I said that one has already been accepted.

THE COURT: Mr. Currier indicated he didn't have any objection. It hasn't been admitted. I will govern what can go to the jury and what can't. Sometimes parties agree to admit things that wouldn't be admissible, and I'm just going to

determine what's relevant and what isn't and under Rule 403 determine what should go to the jury and what shouldn't. So, what I would ask you to do is essentially outline what you want to cross-examine Dr. Benjamin about.

MRS. BENJAMIN: This is an article referred to by Dr. Bina, and the reference was it was some kind of a family operation, and that's what this letter meant. I want to question Dr. Benjamin about this article rather, and I want to question Dr. Benjamin about that.

THE COURT: Well, okay. I'm going to go through these things item by item. What you can do is ask Dr. Benjamin directly, You don't have to ask him about an article. If Dr. Bina read something, that's where he got his information, that technically would be objectionable. You can ask Dr. Benjamin directly or he can testify directly or you can testify directly what was involved in the family operation. What the article says is really not relevant.

MRS. BENJAMIN: The article had nothing to do with the reference that Dr. Bina made, and that's my point. He made a reference to this, and this article does not have a reference to what he said it did; and he said he saw our pictures on the front, which makes it very identifiable, the three of us.

THE COURT: Okay. I'm not sure we have any Identification that that's the same article, but you can ask Dr. Benjamin directly whether that article references anything about -- you can

proceed in that regard. I'm not sure whether that article will go to the jury room, but go ahead.

MRS. BENJAMIN: Okay. I'm going to look through the rest of this. Is that what you told me to do?

THE COURT: Yeah. What I'd like you to do is essentially tell me everything that you re going to ask Dr. Benjamin in a summary form. I don't want you to go through every question. I want to know the subject matters you re going to cover so we can make sure it's relevant and I have a flavor for what's going on, because I don't know until you ask the question whether it should be asked or not and I would prefer not to have to interrupt you frequently. Okay?

MRS. BENJAMIN: So would I.

THE COURT: Okay.

MRS. BENJAMIN: Okay. There is a Medicare situation that was referred to by Dr. Bina, Mr. Currier, and one of their witnesses; and I have papers from Medicare in reference to that and I'd like to cover that.

THE COURT: Okay. Let me explain to you the rules I go by in determining that. You can ask Dr. Benjamin about that and whether there is a dispute, but what I don't want to do is go into a lot of detail about any disputes because that's called a collateral issue and that's not what we're here for.

MRS. BENJAMIN: Right.

THE COURT: We're only here for the collection of money and a claim that it's not owed.

MRS. BENJAMIN: Right.

THE COURT: So, as I indicated to you yesterday, the relevance of the documents of suits being filed against Dr. Benjamin is not to prove that he in fact owed the money but that there was financial pressure at the time.

MRS. BENJAMIN: Yes.

THE COURT: And he can testify that they are disputed.

MRS. BENJAMIN: Right.

THE COURT: If in fact there are judgments and judgments are admitted to show that the money is owed and that's relevant on the issue of financial pressure also. The merits of any of these disputes are not before this jury and, um, I'm going to exclude any kind of a detailed explanation other than the fact that that's a disputed issue, I don't feel I owe the money, and that either did or didn't play a factor in my determination that I either was or was not in financial stress at the time.

MRS. BENJAMIN: Okay. The -- um, there is another issue that was brought up yesterday concerning Dr. Benjamin's income taxes.

THE COURT: Right.

MRS. BENJAMIN: And he wanted to know why there was so many expenses when he filed in '94,

THE COURT: Right.

MRS. BENJAMIN: That was a question.

THE COURT: Right.

MRS. BENJAMIN: And I want to ask him.
THE COURT: Sure. That's perfectly legitimate.

MRS. BENJAMIN: Okay. And I think we covered it. These --the rest of the ads, since you explained to me how they fit, um, I can just ask him the question. I don't have to enter them?

THE COURT: No. You can ask him the questions; and if they are ads that relate to the opening of the business and you want to enter them, just offer them.

MRS. BENJAMIN: During that period, okay.

THE COURT: If you want to offer those, go ahead.

MRS. BENJAMIN: All right.

THE COURT: Is there any objection to any of those?

MR. CURRIER: For the record, your Honor, I marked on Mrs. Benjamin's behalf twenty articles in addition to Exhibit 1, numbering them 2 through 21. Several of them are the ads which are already in evidence as Exhibits 7A, 7B, and 7C. Um, most of the remainder are newspaper accounts with regard to the various TAMC litigation that's been pending in this court or in

the Federal Court for the past couple years. Frankly, I don't object to any of it going into evidence, but I agree it has limited relevance to this case.

THE COURT: Well, I do, because it is not relevant and it lends itself to confusion of the issues in this case, and the issues in this case are actually quite simple.

MRS. BENJAMIN: Yes.

THE COURT: And I want to confine the jury's deliberations to the issues that are generated by this case. So, um, any articles about the defendant's litigation with TAMC is not relevant to this case. I mean, he can and he has testified that he had a dispute, that they cut off his money, that he didn't have the money, and then he was forced to go into private practice. I mean, that's all relevant to this case; but the articles aren't, okay?

MRS. BENJAMIN: Yeah. Okay. I have a clear picture now.

THE COURT: Okay. Is that it or are there other things that you want to cover?

MRS. BENJAMIN: God, I hope so. I believe it is. If I come up with something, I have a question, may I ask you

THE COURT: You can ask me, but I don't want to make it awkward for you or awkward for me because I don't -- I cannot give you advice as the trial goes along in front of the jury, which is why I

recessed the jury at the time so we can discuss these things in advance and so that won't have to happen.

MRS. BENJAMIN: Well, they know I don't know what I'm doing.

THE COURT: Sorry?

MRS. BENJAMIN: They know I don't know what I'm doing. So, if you have to correct me --

THE COURT: Well, you're proceeding quite well. So, you are certainly free to pursue the areas that you think are relevant, and I have the option of interrupting you if they aren't necessary. If I as I indicated, I prefer not to do it; but I will do it if I have to.

MRS. BENJAMIN: I appreciate it, your Honor. I think we're ready to go.

THE COURT: Okay. And do you intend to recall -- or, Dr. Benjamin, do you intend to take the stand again in a direct testimony or is this -- are you going to take the stand again? This is cross-examination, Mr. Currier's case still. So, are you going to take the stand again?

MRS. BENJAMIN: There are only two questions I would need to ask him on the stand.

THE COURT: Okay. I'm asking-- I have to get a sense of what's going on in this case. Do you intend to take the stand again and tell the jury the same things that you've already told them?

DR. BENJAMIN: Not the same things, not everything.

THE COURT: Do you intend to take the stand? You have the option of taking the stand. That's your right, and you can talk about different things.

DR. BENJAMIN: Yes.

THE COURT: Okay. Just as long as we understand each other.

DR. BENJAMIN: Yes, because you mentioned that yesterday not to duplicate the same thing.

THE COURT: Right. And that's simply common sense. I mean, we want to have the jury get a clear understanding of what both sides -- what the issues are, but they don't need to hear it more than once. That's all.

You may bring the panel up.

(The jury entered the courtroom at 9:32 a.m. Continued cross-examination of Dr. Benjamin by Mrs. Benjamin.)

BY MRS. BENJAMIN:

Q. How many patients did you see on average a month in your Presque Isle and Caribou office in the year 1994?

A. About 500 patients a month.

Q. Per week, you averaged between 120 and 130 or 140 a week?

A. That is correct. I would average anywhere between 120 to about 140 patients per week.

Q. Um, most days you saw 28 or more patients in a given day?

A. That is correct, easily 28 or more patients per day.

Q. Did you ever work on Saturdays?

A. Oh, yes, quite frequently had office hours on Saturday.

Q. That was to accommodate the number of patients you had or just because you liked Saturdays?

A. No, that was to accommodate the number of patients to make six days a week.

Q. Um, during Tuesday, Peggy Niblett, one of the plaintiff's witnesses, discussed Medicare situation with you and their funds and etc.?

A. Yes. She testified --

Q. With all of us, she discussed it?

A. Yes, that's correct. She testified in court about Medicare.

Q. She testified that--

THE COURT: Okay. You'll have to ask him a direct question rather than repeating her testimony. Just ask him directly what you want to ask him about.

MRS. BENJAMIN: Okay.

BY MRS. BENJAMIN:

Q. Did you personally know about what she was speaking about?

A. No, I did not, no.

Q. Do you now know what she was talking about?

A. Yes, yes, I do know what she was talking about.

Q. And Dr. Bina's direct testimony, did he refer to a problem with Medicare?

A. Oh, yes, he did.

Q. Did he say that some doctors --

THE COURT: Excuse me. I'm sorry. What I'm trying to avoid is the jury has already heard the testimony of other witnesses.

MRS. BENJAMIN: Uh-huh.

THE COURT: And if you have something that you want this witness to explain, you don't have to go through what was said by the other witnesses, Just ask him directly what your question is.

MRS. BENJAMIN: Okay. Thanks. That cuts down a lot. I always think I have to do more work than I do,

BY MRS. BENJAMIN:

Q. Um, when did this Medicare situation that Peggy Niblett referred to begin, according to her

testimony? She said in the Summer of -- early Summer of 1994. Um, did you know about it at that time in the Summer of '94?

A. No, I did not.

Q. Did you have any reason to discuss that with Dr. Bina in the Fall of '93?

A. No, I had no reason to discuss any problems with Medicare in the Fall of 1993.

Q. Was there actually a problem with Medicare?

A. Um, yes and no. At the time that they mentioned, there were not; but there was a problem reported to me about Medicare concerning me, and that was reported in February of this year, 1996, February of this year, and the letter was sent to me indicating that false information --

Q. I have the letter. I'll let you identify that letter.

MRS. BENJAMIN: I will let counsel see it.

MR. CURRIER: May I voir dire the witness briefly about this?

VOIR DIRE EXAMINATION

BY MR. CURRIER:

Q. Dr. Benjamin, you're saying this relates to a complaint that was made in 1996?

MRS. BENJAMIN: No. I will clarify it. It does not.

MR. CURRIER: Just a moment.

BY MR. CURRIER:

Q. Is this -- does this relate to a complaint that was made in 1996?

A. Um, no.

Q. In 1995?

A. The --

MRS. BENJAMIN: Identify the time period for them.

DR. BENJAMIN: The time period?

BY MR. CURRIER:

Q. When was the complaint made?

A. The complaint was made in --

MRS. BENJAMIN: This is, your Honor --

MR. CURRIER: Mrs. Benjamin, just a moment, please.

THE COURT: The procedure allows him to ask the witness questions.

MRS. BENJAMIN: I wanted to ask you a question. I have to wait?

THE COURT: Just wait until he's done.

BY MR. CURRIER:

Q. When was the complaint made that resulted in this letter from Medicare?

A. Basically, February of '95.

MR. CURRIER: All right. I'd object. It's not relevant to these proceedings.

THE COURT: Objection sustained.

MR. CURRIER: Thank you, your Honor.

THE COURT: Okay. What you're going to have to do is go on. If you have a dispute with Medicare that originated around the area of '93 or '94, you can proceed on that issue, nothing that related to a dispute of Medicare after.

MRS. BENJAMIN: He's not seen the letter. Dr. Benjamin hasn't seen this letter, so he doesn't know when it relates to. This is in direct relationship to June of 1994. He saw -- Mr. Currier gave the letter to me, but Dr. Benjamin had not seen it. I just got that faxed in to me this morning.

CROSS-EXAMINATION

BY MRS. BENJAMIN:

Q. Okay. February. It's February. I'm sorry. Letter came February 26th of 1996. It refers to

problems that -- that began -- they don't identify the time period.

MRS. BENJAMIN: I can identify the time period.

THE COURT: May I see the letter?

DR. BENJAMIN: Yes, your Honor.

MRS. BENJAMIN: Your Honor, there's one way you can identify the time period is by the patients. There are letters to patients, and you can determine when they were his patients, and that can tell you when it was generated.

THE COURT: Why don't you summarize the contents of the letters and move on, okay?

MRS. BENJAMIN: Okay.

THE COURT: You can ask him just about the summary.

MRS. BENJAMIN: Okay.

BY MRS. BENJAMIN:

Q. Um, this letter came from --

THE COURT: Go ahead.

Q. This letter was sent to you? Had you seen the letter before I just handed it to you?

A. No.

Q. Did you happen to notice where the letter was addressed?

A. Um, to 171 Academy Street.

Q. And where does the mail that goes to 171 Academy Street go?

A. Um, goes to 171 Academy Street and then it goes to a post office box here and then someone picks it up and sends it to Ann Arbor.

Q. Right. And this letter, wherever it arrived at and I had it fared in from today, had never reached you?

A. No, it hadn't. No, it hadn't.

Q. The patients in this list I'd like you to look over and tell me when they were your patients so we'll know when this letter refers to. Do not mention the patient's names because I didn't have time to remove them.

A. Refers to patients I've been treating since 1992, '93, '34.

Q. Are there any '91 patients in there?

A. Actually, three.

Q. Three from '91 and the rest are from '92, '93, and '94?

A. That is correct.

Q. Um --

A. Oh, that's -- that makes four from '92 and two from '91.

Q. The number from each year I wasn't concerned with so much, just if it covers that period.

A. Yes.

Q. Now, the letter refers to -- do not read from the letter sir. Just refer to it. Do not read from it,

THE COURT: You can ask the question in summary form.

MRS. BENJAMIN: Oh, okay.

BY MRS. BENJAMIN:

Q. This letter tails you that data was placed in your provider record.

A. Yes, it does.

Q. You need the letter?

A. I'm sorry.

Q. And you look at the second paragraph that begins as you know.

A. Yes.

Q. It says that data was placed in your Medicare record indicating that a sanction exists due to a programrelated conviction. You see that?

A. I see that, yes.

Q. On your fourth paragraph down, it says -- oh, no, the third paragraph down, it says, as you know,

based upon your lack of knowledge of any sanctions, you see that?

A. Yes, I do, yes.

Q. Did they tell you that they did a complete investigation?

A. Yes, they -- a complete investigation was done.

Q. Did they tell you they quarried all potential sources?

A. Yes, they did.

Q. And on the fourth paragraph, does it state -- where it states apologize --

A. Yes, I apologize for any inconvenience,

Q. I didn't ask you to read it, just does it

A. Yes.

Q. You see it? We both can't -- we both can't goof up. I make enough of my own. I apologize. That paragraph, you see that paragraph?

A. Yes, I do.

Q. The writer of the letter says, I have informed the U.P.N. (sic) Registry of my findings. What is the U.P.N. (sic) Registry?

THE COURT: Okay. Mrs. Benjamin, the relevance of the Medicare testimony was only admitted to show that there may have been a dispute; and if

you want to ask him if the dispute was cleared up and they apologized because they made a mistake, you can do that and he can just say yes and we can move on. As I've indicated to you, this case is about a collection of money for what is claimed a loan and a defense claim of a joint venture.

MRS. BENJAMIN: Okay.

THE COURT: So I want to limit the testimony to those relevant issues, and you may ask him about issues that he testified to on direct examination that you want to clarify, and you can ask him just right straight out because this is cross-examination, You can phrase it any way you want, and you can include that information in there so the jury knows it when he answers the questions; but I don't want to get into the details of disputes. If he disputed the merits of something, the merits of those other disputes are not an issue here.

MRS. BENJAMIN: Okay. What I wanted to show was that he didn't even know there was --

THE COURT: Fine. Ask him that directly. You can ask him and all he has to do is say I didn't know.

BY MRS. BENJAMIN:

Q. Did I ask you already?

A. Yeah.

Q. Did you know this dispute existed?

A. No, I did not.

Q. Did you know --

MRS. BENJAMIN: I already asked him enough questions about this, didn't I~ Yeah. Okay. Do I need to give the author of the letter or that's fine?

THE COURT: It's up to you. I mean, I'm just indicating to you the purpose of that information is not to prove that he did or didn't owe money. It's only relevant from the plaintiff's perspective to show those things existed and the plaintiff claims there was a dispute. He can indicate that they either didn't exist or he didn't know about it or he disputed it.

MRS. BENJAMIN: Right.

THE COURT: Okay?

MRS. BENJAMIN: Okay,

BY MRS. BENJAMIN:

Q. I will give the name of the person who actually -- the person who gave you -- signed this letter was a Robert P. McGinley (sic) from the Fraud and Abuse Unit of Medicare. That's a federal agency.

A. Yes, it is.

Q. Did you have reason to inquire -- I' done with the Medicare issue. Get that out of your way. Did you have reason to inquire of TAMC during 199-- I don't have that right in front of me, so I'11 go on to the next thing. During Mr. Bina's

testimony, Dr. Bina, do you recall Dr. Bina stating that he had never been offered the Presque Isle office by me?

A. Yes, I do remember him saying that.

Q. I have here an affidavit signed by Dr. Bina dated January 5, 1996.

MRS. BENJAMIN: Do I need to show it to him?

MR. CURRIER: Has it been marked?

MRS. BENJAMIN: Oh, you want me to put it in as an exhibit?

MR. CURRIER: Sure, just to identify it if nothing else.

THE COURT: Why don't you ask the question and we can take care of that at a later date. Just ask your question directly.

MRS. BENJAMIN: Thank you.

BY MRS. BENJAMIN:

Q. You'll notice there on Number 8 --

A. Yes.

Q. That is an affidavit of Dr. Bina. Read the face of It. Cr. Bina generated that affidavit?

A. Yes, he did.

Q. And he signed and had it notarized on January 5th? That is correct.

Q. Read what he says on Number 8.

A. He states that, Number 8, at one point in time, Rebekah Benjamin asked me to take over Dr. Benjamin's office space/property in Presque Isle. I declined.

Q. Your '94 tax return that Mr. Currier mentioned to you and he told you there was an excessive amount of cost in that year and he asked you why, you recall that?

A. Yes, I do.

Q. This is your '94 tax, I believe. I don't know where he found that. Did he show you? If he did, would you locate it?

A. Oh, it was a '93 tax return.

Q. It was '93?

A. It was entered as an exhibit, I believe, yesterday.

Q. Oh, I have '93 here. I thought it was '94. I'm getting it as fast as I can. I think they might be the same thing.

A. I see Vickie Harris. I think she's looking.

Q. I'll hand them both to you. Oh, she has it already. Oh, okay.

A. Thank you. Yes, I have the income tax from 1993. And where is that that he pointed out to you?

A. It's on page -- it's on page 3, yes, line 28, where he said -- well, noted that there was a total expenditure of -- noted total expenditure of $153,063.18.

Q. In costs?

A. In costs. And the prior year, there had been $74,000. And he asked you why the difference between the two years?

A. Yes, he did.

Q. Why is there a difference between the two years?

A. In 1993, in February of 1993, my -- the office that I had at 165 Academy Street had been flooded out completely. I lost all the interior contents of that office; and, um, Dr. Hamlin subsequently sued me to --

Q. Not that part. I don't want to hear that part. I want to know why it cost you so much, what the costs were.

A. I had bought -- I had to replace, well, total cost about $40,000 to replace the contents, replace the contents of what I had there and to take a new office at 171 Academy Street, which is what I had in Presque Isle after -- starting in April of 1993. There was a tremendous amount of expenditure to make that move over.

Q. Did you also do a buildup of that building?

A. Yes, I did. I did a major buildup with Mr. Doug Talbot.

Q. And --

THE COURT: Excuse me. This is very awkward. The court reporter probably has the toughest job in the courtroom. She has to write down every single word, and she can't be used to pass exhibits back and forth because she has to write down things being said at the same time and she needs both hands to do that.

MRS. BENJAMIN: And her mind. I'm sorry. Needs her concentration too. I apologize. I just got carried away.

BY MRS. BENJAMIN:

Q. Part of the -- the amount of moneys that are over what you normally paid, does that directly reflect the cost to you of that incident in February?

A. Yes, yes, it did.

Q. The -- oh, I have

MRS. BENJAMIN: Wait a minute. I have to give them back their exhibit. I believe I have everything here in the chair I want to talk about.

BY MRS. BENJAMIN:

Q. During the period of September '93 through April of '94, that's the time that these checks were issued, you think back to that time.

A. Yes.

Q. Do you of your own personal knowledge know what my personal income was?

A. I don't know, no.

Q. Do you know of your own personal knowledge what your father's income was?

A. Yes.

Q. Did you receive a designated portion of that income specifically for your business?

A. Yes, I did.

Q. Can you tell us with any accuracy to the dollar amount what you received each and every month from your father?

A. Um, anywhere from $3,000 to $4,000 a month.

Q. There was a set amount he gave you. I don't mean any increases he made. I mean just as the set amount that you received every single month from your father. One thing that was absolutely reliable was $1,600 a month, $1,600 a month.

Q. And that was for --

A. That was for the practice expenses.

Q. And you received an additional portion for yourself personally. What amount was that?

A. Um, it ranged anywhere from --

Q. No, I don't want the range. Where he gave you extra -- he gave you a set amount of money every single month for you to use for yourself personally,

A. It was about $400.

Q. For you personally?

A. Yes.

Q. Do you know what he gave me in child support and alimony during that period of time?

A. I know it was more than a thousand dollars a month. No. You either know or you don't. Do you know the exact amount? No, I do not.

Q. When he sent the checks to me, do you know how much it was?

A. No, I do not.

Q. Do you know that he did send me alimony or do you not know that?

A. Yes, I do know.

Q. You know that he sent me alimony each and every month?

A. Yes.

Q. And child support?

A. Yes.

Q. Other than that amount of money, what did you use to maintain your practice, the sums we have just spoke about that came from your father?

A. About -- well, minimum $2,000 a month.

Q. Where did you get that? The money that you -- now, you sit there and you got it very clear in your head; but my question is the money that you used to maintain your practice, other than the money that your father provided to you,

A. Oh, I'm sorry.

Q. And it hasn't been established yet that I gave you money. Did I? Did I give you funds during that period of time? Did I from whatever my source was contribute to your business?

A. At times, yes, you did.

Q. Now, I'm not discussing moneys that I might have given you, that your father gave you, or from any other personal source. What else did you use to fund your business?

A. Um, moneys from my brothers and moneys from the family members outside --

Q. Dr. Benjamin, son or not, I ask you directly, what did you use other than contributions from your family? What was your other source?

A. Patient's receipts.

Q. That was hard. So, you used patient receipts?

A. Yes.

Q. And if the patient's receipts did not generate enough funds for a given month, where did you get the funds to make it up? Now you can talk about other sources. Family members.

Q. All right. In January of 19P4, when your office opened in Caribou --

A. Yes.

Q. -- that was either the 10th or the 11th of the month.

A. That is correct.

Q. Now, you think back to that time period. I don't remember if it was a Monday or a Tuesday, but I know it was either the 10th or the 11Th of the month

A. Yes.

Q. -- that that practice opened because I -- all of the staff were to meet on that day. Do you remember that day? All of the newly hired staff was to meet.

A. Yes.

Q. Was it a Monday or a Tuesday or do you recall?

A. I do not recall. I do not recall.

Q. But I have it in that -- do I have the right time frame?

A. Oh, yes, yes, you do. That was the correct time period.

Q. And did I postpone my trip to be there that day? Think back to all the people that were there that day, whatever date the opening was.

A. Yes.

Q. I was in Caribou in your office on that day.

A. Yes, yes, you were.

Q. The -- when the office opened and you invited your first -- we had a staff meeting and you invited your first patient in, that was either the first or the second day, either 10th or 11th, whichever day that was.

A. That is correct,

Q. Is there an employee that you had at that time who is in this courtroom today?

A. Um, yes.

Q. And the name of that person?

A. Philip Roy.

Q. Was he at that meeting that day?

A. Yes, he was.

Q. The office opened, you got under way in that particular week; is that correct?

A. Correct.

Q. And when did I see you again after that day?

A. Not until --

Q. If you don't know, say so.

A. Well, I definitely know it was about three weeks later.

Q. Okay.

A. January 1994.

MRS. BENJAMIN: I believe it looks like I'm going to be finished. Wait and see if I am.

BY MRS. BENJAMIN:

Q. Yesterday when we left, I was talking to you about the check disbursement journals of Dr. Bina.

A. Yes.

Q. And I showed you the checks journal, disbursement journal, from September and from October.

A. Yes.

MRS. BENJAMIN: I can put them into evidence at any time, can't I? I don't have to do it now, do I?

THE COURT: Are they in evidence, the check journals?

MR. CURRIER: Check journals? The ledger sheets? No, they are not.

MRS. BENJAMIN: Can I put them in later?

THE COURT: Do you want to offer them?

MRS. BENJAMIN: Yeah, I do.

THE COURT: Is there any objection?

MR. CURRIER: No.

THE COURT: It will be admitted. They have to be given a number. That's all.

MRS. BENJAMIN: Okay. I think I have those. What number am I at now?

DR. BENJAMIN: 2, Defense Exhibit 2.

MRS. BENJAMIN: This is Number 2 and 3,

THE COURT: The clerk will do that.

MRS. BENJAMIN: Oh, just hand them to her? We have all the work cut down, Um, one reason

THE COURT: Go ahead and ask your question directly, please.

MRS. BENJAMIN: Okay. I need to tell you something. One reason I was hesitant to put them in right now is because I don't know whether it came to me with that on it.

THE COURT: Okay. That's all right. We'll clarify that if necessary. You can just use it as you have it.

MRS. BENJAMIN: All right.

BY MRS. BENJAMIN:

Q. On September 11Th, we went over about the purchase of the paintings; and in order not to duplicate, was that associated with this, that painting associated with this offering?

A. Yes, it was.

MRS. BENJAMIN: May I offer that too? THE COURT: Yes.

MR. CURRIER: No objection.

THE COURT: It will be admitted.

BY MRS. BENJAMIN:

Q. And the October 10th I spoke to you about, that's on this ledger?

A. Yes.

Q. Was that associated with the October -- the check that's dated October 11th?

A. Yes, yes, it was.

MRS. BENJAMIN: I don't have a sticker on this one.

THE COURT: Just pass it to the clerk.

MRS. BENJAMIN: I have three more questions.

THE COURT: Go ahead.

MRS. BENJAMIN: Oh, okay. I just have -- I thought I had -- oh, I want to enter this affidavit in evidence.

MR. CURRIER: No objection.

THE COURT: That will be admitted. The clerk will mark that.

MRS. BENJAMIN: Do you have a copy of Dr. Bina's deposition?

MR. CURRIER: I do.

MRS. BENJAMIN: I want to refer to that.

MR. CURRIER: It's my understanding, your Honor, that copies of depositions, although they have been marked as exhibits, will not be offered.

THE COURT: They can be offered, but I've indicated that they will not go into the jury room.

BY MRS. BENJAMIN:

Q. During Dr. Bina' testimony, he stated to you that he had in fact loaned me money, his direct --

THE COURT Okay. I'm sorry to interrupt you. You do not have to ask the witness whether they heard somebody else testify.

MRS. BENJAMIN: Oh, you told me that before.

THE COURT: Ask him the question directly, and then the jury can decide if there is a difference between two witnesses' testimony. You don't have to refer to other -- what other people said in order to get them, yes, I heard that or, yes, I did say that. If you want to ask a question because you want information before the jury that is either the same or different than that other witness, ask the witness directly that question, please.

MRS. BENJAMIN: Okay. And you told me before and I'11 do my best.

THE COURT: That's all right.

BY MRS. BENJAMIN:

Q. Dr. Benjamin, let's see now. Did Dr. Bina ever tell you, as he had in this courtroom, that he had in fact loaned me money?

A. Yes.

Q. I want to refer you to Dr. Bina's deposition of November 28th.

THE COURT: I' m sorry. That's an improper use of the deposition.

MRS. BENJAMIN: Oh, okay.

THE COURT: If you have questions for Dr. Bina that haven't been already covered, you can ask him; but you can't ask this witness about other witnesses' testimony.

MRS. BENJAMIN: I can't ask him if he took -well, he took the deposition.

THE COURT: What is it you want to ask the witness?

MRS. BENJAMIN: Did he tell him this during the deposition?

THE COURT: Did Dr. Bina say that?

MRS. BENJAMIN: Dr. Benjamin did the deposition. He was the poser -- he posed the question, and this statement was made to Dr. Benjamin under oath, and I want to know if he recognized the statement as having been made to him.

THE COURT: You can ask Dr. Bina -- you can ask him a question about his current state of mind; and if his testimony and his deposition was different, then you can ask him whether he said that in the deposition.

MRS. BENJAMIN: But I don't ask Dr. Benjamin if he said it to him.

THE COURT: No. That's like putting Mr. Currier on the stand and saying did you hear somebody else say something.

MRS. BENJAMIN: Oh.

THE COURT: Okay?

MRS. BENJAMIN: Complicated by the fact we shouldn't even be doing this ourselves. We should have somebody else here. I see. I got the

whole picture. I know where I am now. I need your deposition. If a subject has not been covered already on his examination of the --

THE COURT: You can cover any subject you want to with the doctor on cross-examination as long as it's relevant.

MRS. BENJAMIN: Then we're all set.

THE COURT: As long as it's relevant to this case.

MRS. BENJAMIN: Then we're all set.

BY MRS. BENJAMIN:

Q. There is a November check. I gave you September and October. There was a November check, and let's see when that November check was. On the 16th of November, 1993, and it's on the check disbursement journal of Dr. Bina. Do you see 11/16/93?

A. Yes, I do.

Q. And there is a check disbursement at that time. Yes, yes, there is. There is a check disbursement. Was that check disbursed according to that record on 11/16/93?

A. Yes, it is. It's disbursed on 11/16/93.

Q. To whom was the check written?

A. Issued to Rebekah Benjamin, yourself.

MRS. BENJAMIN: Thank you. That's it, That's all I need. Your Honor, may I introduce that?

THE COURT: Pardon me?

MRS. BENJAMIN: May I enter that into evidence?

THE COURT: Any objection?

MR. CURRIER: No objection.

THE COURT: Be admitted.

MRS. BENJAMIN: I'm done. I just need to get myself and my papers back to the --

THE COURT: Okay. If you could assist her. Mr. Currier, do you have any further questions of the witness?

MR. CURRIER: I have a few questions, your Honor.

THE COURT: Okay. You may take the stand.

BY MR. CURRIER:

REDIRECT EXAMINATION

Q. Dr. Benjamin, I'd like to show you once again Exhibit 2D. This is a check that has your stamp on the back. You may recall testifying about this yesterday on cross-examination.

A. Yes.

Q. Am I correct that your testimony was that this check was stamped and that the only people who

had access to the stamp were Phil Roy and members of your family?

A. That is correct.

Q. And your further testimony was that Phil Roy had an account at Key Bank, but no one else in your family did?

A. I did not say that.

Q. Okay. Is it your position that Phil Roy converted the funds from this check to his own use?

A. That is not my position. I do not know who did that.

Q. Phil Roy is present in the courtroom today; isn't he?

A. Yes, Phil Roy is.

Q. Wasn't present here yesterday.

A. No, he was not.

Q. Just so that we can dispel any misconception, is it your position today that those funds were in fact received into your practice?

MRS. BENJAMIN: Your Honor?

THE COURT: Yes, ma'am?

MRS. BENJAMIN: I object to him misquoting my question and his answer.

MR. CURRIER: That's for the jury to decide, your Honor.

THE COURT: Right. You may proceed. You may proceed.

MR. CURRIER: Thank you.

BY MR., CURRIER:

Q. Just so we all have a clear understanding, Dr., Benjamin, what happened to those funds?

A. I do not know.

Q. Whose account number is that below the stamp of your signature?

A. I do not know.

Q. Is that your office account number?

A. I do -- I do not know.

Q. Did your office have an account at Key Bank?

A. No, no, we did not.

Q. You sure about that?

A. I'm absolutely sure.

Q. You're positive?

A. Yes.

Q. Okay. Phil Roy was employed by you as office manager from January through March of 1994?

A. Yes, yes.

Q. And he was responsible for setting up the Caribou office? Was that part of his duties?

A. That was part of his duties.

Q. You heard Phil St. Peter testify yesterday that he met with Phil Roy and your mother about setting up the space, and yourself and Phil Roy?

A. Yeah, yeah.

Q. So he would have been involved in the initial setup of the Caribou office?

A. Yes, he was.

Q. And from that, may I presume he would be familiar with this joint venture?

A. He would not. Well, he shouldn't be.

Q. Should he have been familiar with this joint venture with you and Dr. Bina?

A. He was familiar with the setup of the office and things.

Q. Can we expect if he were called to testify here today that he would confirm this joint venture between you and Dr. Bina?

THE COURT: That's an improper question, You can't ask him about what somebody else would say.

MR. CURRIER: I understand.

BY MR. CURRIER:

Q. Was he ever present at any of the meetings, the several meetings you had with Dr. Bina?

A. No, he was not.

Q. Would he have had occasion to discuss the matter with Dr. Bina in your presence about this joint venture?

A. No, he would not.

Q. All right. And, Dr., Benjamin, your father is a lawyer?

MRS. BENJAMIN: How is that relevant?

DR. BENJAMIN: How is that relevant?

THE COURT: You may ask the question.

MR. CURRIER: Thank you, your Honor.

BY MR. CURRIER:

Q. Is Your father a lawyer?

A. Yes, he is.

Q. Is your uncle a lawyer?

A. Um, yes.

Q. James Chandler, Professor Emeritus?

MRS. BENJAMIN: Your Honor, he has six uncles, all of whom are lawyers. He has to identify whom he's talking about.

THE COURT: You'll have to identify who you're talking about,

BY MR. CURRIER:

Q. Your father's a lawyer and you have six uncles who are lawyers; is that right?

A. That's correct.

Q. Did it ever occur to you to consult with a lawyer about drawing up paperwork concerning this joint venture?

A. For -- it was not necessary, and I did consult with my father. As you know, I wasn't allowed to discuss that because it's considered hearsay.

Q. Did you have a joint venture agreement drawn up between you and Dr., Bina, anything in writing that would confirm the terms of this agreement?

A. No, no.

Q. Now, you testified this morning that you closed your practice in October of 1995.

A. That is correct.

Q. And the reason for closing your practice is because Dr. Bina sued you on this account, on this matter that's in issue here today?

A. Um, yes. I mean, that is the primary reason. I had felt Dr. Bina was a very good friend; and when that happened, I felt that I had been stabbed in the back. In consultation with other family members of this, um, decided this is it, I mean, to leave.

Q. Did your decision to leave have anything to do with the fact you didn't have privileges at Cary or at TAMC ?

A. I mean, that does factor in; but I was fighting just to --

Q. Wasn't the primary reason though?

A. It was not the primary reason.

Q. And the primary reason for your closing your practice had nothing to do with the $80,000 plus of creditor claims that I've shown you in your examination?

A. That was a factor.

Q. It was a factor?

A. That was a factor.

Q. Wasn't primary factor though

A. It had existed before May of 1995. The Dr. Bina suing me at that time was a major stab in the back. It was like I was being shot in the head by a mother or a father. You just never expect it.

Q. When was your license in Maine due for renewal?

A. Um, in October of '95.

Q. And you didn't renew your license to practice in Maine, did you?

A. No, I did not.

Q. So if you're not licensed to practice in Maine, you'd have to close your medical practice; wouldn't you?

A. logically, yes. That -- yeah, but I mean

Q. Dr. Benjamin, you re under oath here today. Do you understand that?

MRS., BENJAMIN: Your Honor, he knows he's under oath.

THE COURT: Okay. Go ahead. MR. CURRIER: Okay. Thank you.

BY MR. CURRIER:

Q. Primary reason you closed your practice was because of the imminent loss of your license last October.

A. That is not true.

Q. That's untrue?

A. That's not a true statement?

Q. That is untrue,

A. You didn't renew your license here in Maine.

MRS. BENJAMIN: The question has been asked and answered. No need to get emotional.

BY MR. CURRIER:

Q. Dr. Benjamin, are you currently practicing in California?

A. Um, no, I'm fighting litigation, multiple litigation`s.

Q. You're not working in California?

A. No, I'm not,

Q. Is your license current and valid in California? Yes.

A. Is it current and valid in Michigan?

Q. No, it is not.

Q. Is it current and valid in Connecticut?

A. No, it is not.

Q. Dr. Benjamin, your mother handed you something which she indicated was your 1994 tax return. Have you filed a 1994 tax return?

A. No. That was Dr. Bina's tax return for 1994.

Q. All right. Your testimony yesterday was that you were under no undue financial stress in 1993 and 1994; is that correct?

A. That is -- yeah, that is correct.

Q. But although you were not under any financial stress, you were receiving $2,000 a month from your father.

A. Yes.

Q. And in some months, more than that.

A. Some months, more than that, yes.

Q. And you were receiving payments from your mother. On occasions, yes.

Q. Your mother is the same person you claimed as a dependent in 1992?

A. In 1992, yes.

Q. And from family members, brothers and sisters.

A. Yes.

Q. Including any of those that you claimed as dependents in 1992?

A. No, no, no.

Q. All right. Plus your patient receipts.

A. That is correct.

Q. Plus moneys that you received from Dr. Bina.

A. Um, no, that was for the joint venture.

Q. Okay. Now, this money that you received from Dr. Bina went into an office in Caribou; is that right?

A. Um, yes, for expenses for the office in Caribou.

Q. Sure. Payroll, furnishings, supplies, and so forth.

A. Yes.

Q. Okay. Did Dr. Bina consume any of those supplies or services? That is, did he come there and see patients?

A. No, he chose not to.

Q. So you -- you used the space that was rented.

A. Yes, I did.

Q. You used the office equipment and furnishings that were there to see patients.

A. Yes.

Q. You used the services of the nurses and clerical staff to see your patients.

A. Yes, I did.

Q. So you essentially consumed all of the goods and services that were purchased with these funds as part of your practice.

A. Not entirely true. I had to split my time between the Presque Isle office and the Caribou office, and I had -- I went from my five-day work week to six-day work week, three days in Presque Isle and three days in Caribou, and that was a -- that was an expenditure. I mean, expenditure and time on my part, and that was for three days at the office in Caribou. I was paying for employees there who were receiving calls and things and working; but, um, I mean, it's an expense on my part.

Q. But when you were in Caribou, you would have consumed the goods and services purchased with this money.

A. Consumed? I would have expended those. I mean, I had expenditures myself.

Q. You enjoyed the use of the space to see patients.

A. I did, yes, yes.

Q. And the office equipment, supplies, and furniture were all used as part of that practice to see those patients.

A. That is correct.

Q. And the payroll expended was for your clerical and nursing staff to assist you in recordkeeping and seeing patients.

A. And you must note it's also Dr. Bina's as well, but partly mine.

Q. You testified Dr., Bina never availed himself of this opportunity.

A. That is correct.

Q. Never saw a single patient in Caribou, did he?

A. No, no, he did not,

Q. So whatever was consumed out of that office was all consumed by you.

A. You say consumed, but it's more expenditure. Utilized, utilized. Is that a better word? Utilized that office?

A. I was there and saw patients, yes.

Q. And when you closed the office and put everything over into storage, you treat that as your property; do you not?

A. That is mine and Dr. Bina's property.

Q. Oh, you're willing to agree that he's a half owner of that property?

A. Absolutely. I mean, you know --

Q. Where is it in storage?

A. Here in Caribcu.

Q. Where in Caribou?

A. In a storage here in Caribou.

Q. What's the name of that storage?

A. I -- um, I don't have the exact name.

Q. Where is it located?

A. Here in Caribou.

Q. How big is this storage where the furniture is located?

A. Space, um, just approximately -- I do not -- it was 20 by 10.

Q. Who owns this building?

A. I don't -- I don't know.

Q. Is it a commercial storage or someone's garage? It's a commercial storage.

A. What street is it located on?

Q. I do not know.

A. What unit number is it?

Q. I do not know.

Q. Are there numbers on the doors?

A. I do not know.

Q. Do you know if there's a number on the door where you're storing this equipment?

A. I do not know.

Q. What's in storage there?

A. Um, the equipment from the Caribou office.

Q. How about the eleven paintings and lithographs, where are they?

A. That's in the Caribou office as well.

Q. When those paintings and lithographs were purchased --

A. You know that you have a lien on that.

Q. I'm certainly glad to hear that.

A. They cannot remove it from the Aroostook storage here, it's in

Q. Um, when the eleven lithographs and paintings were purchased, did your mother receive a commission on the sale, if you know?

A. I do not know.

Q. Was she the broker for the artist?

A. You know, I -- I do not know. You'll have to ask her.

Q. When you paid your portion of the purchase of the artwork, how did you pay for it?

A. In cash.

Q. Where did you get the cash?

A. From patient receipts.

Q. Did you cash those checks and then pay for this artwork?

A. Boy, I -- um, let's see. It was paid for in cash from, you know, from my practice, what I generated.

MR. CURRIER: Thank you, Dr. Benjamin. That's all I have, your Honor,

THE COURT: Okay. You have further questions?

MRS. BENJAMIN: Yes, please.

THE COURT: Okay, You can assist her.

RECROSS-EXAMINATION

BY MRS. BENJAMIN:

Q. He just asked -- Mr. Currier just asked you a series of questions. I want to ask you why you don't know the answer to any of those questions about the storage, where it is placed, what the number is, etc.

A. Oh, initially, I had the storage in the Caribou-- well, in the Caribou --

Q. There is a direct question and not --

A. Oh, okay. Why I don't know?

Q. Did you put them in the storage yourself personally?

A. No, I did not. Mr.

Q. Have you ever seen the storage place?

A. No, I have not.

Q. Do you know the name of the storage place?

A. No, I do not.

Q. Do you know who knows that name?

A. Yes, I do.

Q. Who is that person?

A. That person is Mr. Dana Cassidy, Dana C. Cassidy.

Q. Why were those things left here in Caribou?

A. They were left here in Caribou because there is a lien on them from Mr. Currier and Mr. Bina.

Q. When you utilized that Caribou office in January, February, March, April, May, did you utilize that office totally alone, just yourself and your staff? FJere you the only physician in that office? I'm not talking about people who came in to care for you. I'm talking about to take over for you while you were gone. I'm talking about

people who practiced there. Were you the only physician who practiced there?

A. Yes, I was the only physician who practiced in that office, yes,

Q. How many days a week were you there?

A. I was there three days a week at the Caribou office.

Q. And three days a week in Presque Isle?

A. And I was another three days of the week in the Presque Isle office.

Q. Um, you were asked questions about you had -- there was a question about whether or not you renewed your license or did not renew your license in October. When was the decision made not to renew your license in the state of Maine?

A. Oh, that decision was made in May of 1995.

Q. And when did you leave -- we have already stated that, when you left the state of Maine. And when Dr. Bina connected with you -- however either one of you want to describe it-- on this joint venture, was it ever considered that that money would be a part of anything except the joint venture?

A. No. The money was all applied to the joint venture.

Q. Who maintained the responsibility of that joint venture after Dr. Bina stopped participating?

A. I maintained the -- I did.

Q. All of the debts that are more than $80,000 of them that are held against you, can any of that debt be attributed to your Presque Isle office?

A. Um, no, no.

Q. Does the -- did you take from the Presque Isle office materials, equipment, etc., and put it into the Caribou office?

A. Yes, I did. I took -- yes, I did.

Q. Is that accounted for in your costs that you said that you paid out for that?

A. Yes, yes.

Q. The undue stress that you were under, Mr. Currier has stressed the fact that it was financial.

A. Yes, he has.

Q. Um, you were under stress at that time -- well, wait a minute. Let me ask you. Was the financial situation the cause of the stress that you were going through at that time?

A. No, no, it was not.

Q. There were other reasons?

A. Yes, there were definitely other reasons.

Q. Associated with The Aroostook Medical Center?

A. Yes, there were.

Q. Um, Mr. Currier suggested that -- well, your Honor told me not to do that. I'm doing my best. Let me back up. Did you ever state or suggest that Mr. Roy had an account at Key Bank?

A. No, no, I did not.

Q. When you got ready to tell who had an account at Key Bank yesterday, I asked you not to.

A. That is correct.

Q. Do you know who in your employ had an account with Key Bank?

A. No, I do not.

Q. Do you know anyone who had been in your employ and had been since released who had an account at Key Bank? Think back to that time period just before Phil Roy came on board.

A. Um, yes.

Q. Do you know the name of that person?

A. Yes, it was a man, um --

MRS. BENJAMIN: Um, just a moment. Your Honor, should we mention names or anything?

THE COURT: If you wish to.

BY MRS. BENJAMIN:

Q. Okay. Go ahead.

A. Carl Samuels.

Q. And did that person have access to your stamp?

A. Yes, yes, he did.

Q. Did that person use your stamp to place checks in banks?

A. Yes, he did.

Q. Did Phil Roy have anything whatsoever to do with that Key bank account of that person? Was Phil Roy there when that person had access to all that?

A. He may -- he may have been. I don't --

Q. You don't remember?

A. I do not know. I don't know.

Q. But my question direct to you is did anything to do with that stamp and Key Bank have to do with Phil Roy?

A. I don't believe -- no, I don't -- no, I don't believe so.

Q. No knowledge whatsoever of Phil Roy having anything to do with that?

A. No, no.

Q. Was it your intent at any time to suggest that he did?

A. No, it was not.

Q. Whether he is present or not?

A. No, no, it is not.

Q. You utilized the space at Caribou to see your patients alone?

A. That is correct.

Q. From that office in Caribou, did you refer urological patients from that office to Dr. Bina?

A. Yes, yes, I did. Yes, I did, quite a few.

Q. If that --

A. And patients were --

Q. Well, I don't want -- go ahead.

A. And Dr. Bina referred patients to me to be seen there for medical clearance.

Q. In your association, medically, not just for Caribou office but during the time period in question, September through April, September of '93 to April of '94, could you give a number of patients that you believe you referred to Dr. Bina?

A. More than -- more than twenty patients I referred to Dr. Bina.

MRS. BENJAMIN: That's it. I'm finished.

THE COURT: Okay. Thank you. Anything further?

MR. CURRIER: I have one area I want to ask about, if I may.

THE COURT: You can assist her back.

REDIRECT EXAMINATION

BY MR. CURRIER

Q. Dr. Benjamin, before I leave this, I just want to understand, if I can, the situation with this other employee you've mentioned here today. Did you say his name was Carl?

A. Carl Samuels.

Q. Carl Samuels?

A. Yes.

Q. What period was he employed by you?

A. Um --

MRS. BENJAMIN: Your Honor, that's a difficult question because he wasn't an employee as such.

THE COURT: Okay. He's allowed to ask these questions.

MRS. BENJAMIN: Oh, okay.

THE COURT: This is his witness. He's on the stand, and he's entitled to ask him the questions.

MRS. BENJAMIN: Okay.

THE COURT: He did testify pursuant to your questions, and he's entitled to ask these questions,

MR. CURRIER: Thank you.

BY MR. CURRIER:

Q. This Carl Samuels, for what period of time was he either employed or associated with you?

A. Um, the latter part of 1993 and, um, early part of '94.

Q. And Phil Roy came to work for you in January of '94?

A. Um, yes.

Q. You heard Phil St. Peter testify that he came to help set up the office in Caribou in January.

A. Yes, yes, he most certainly did.

Q. All right. At what point did Mr. Samuels get done or disassociate himself with your practice?

A. Um, somewhere in January.

Q. Can I see Exhibit 2D? What's the date on this check?

A. Um, 2/7/94.

Q. So Mr. Samuels would have left your practice by that date?

A. He had not left the area. He had not left coming to the office by that date, no. That's an inaccurate characterization.

Q. Isn't it true you never mentioned this individual yesterday on cross-examination as someone who had access to this check?

A. Um, you didn't mention the other person.

Q. You didn't mention him yesterday as a person who had access to this check.

A. You asked me specific names and I responded to them.

Q. Phil Roy, Benjamin Benjamin, Mrs. Benjamin.

A. And myself.

Q. And yourself.

A. Right.

Q. You didn't mention Carl Samuels. You only mentioned him today when Phil Roy was sitting in the room; isn't that true?

A. That is correct, yes.

MR. CURRIER: Thank you, Dr., Benjamin.

THE COURT: You may ask him questions about that subject.

MRS. BENJAMIN: I only have one question to ask him.

THE COURT: Mm-hm.

RECROSS-EXAMINATION

BY MRS. BENJAMIN:

Q. Do you know where -- well, I have three questions. Do you know where Carl Samuel came from?

A. Yes.

Q. Well, tell us.

A. He came from the Caribbean.

Q. And who brought him here from the Caribbean?

A. My brother brought him here.

Q. And when did I send him back to the Caribbean?

A. I do not know. I know it was '94.

Q. Um, do you know when he left?

A. I believe in -- I believe in March, March of '94.

Q. If you don't know any of these, you simply say so.

A. Okay.

Q. Um, the circumstances of his leaving, did he leave on good terms with me?

A. No, he did not.

Q. And was he ever a direct employee of yours?

A. No, he was not.

Q. His only association with your office was through me?

A. That is correct.

MRS. BENJAMIN: That's it.

THE COURT: Any further questions?

MR. CURRIER: That's all I have of this witness, your Honor.

THE COURT: You may step down.

MRS. BENJAMIN: I was going to say I have no more, but he has no more.

THE COURT: Jury may recess.

(The jury left the courtroom at 10:40 a.m. The following proceeding was held out of the presence of the jury.)

THE COURT: Mr. Currier, what do you have left in your direct case?

MR. CURRIER: I have one rebuttal witness. I'm going to call Phil Roy, and then I'll rest.

THE COURT: Okay. you have just Mr. Roy left?

MR. CURRIER: That's it.

THE COURT: Okay. And, um, Mrs. Benjamin and Dr. Benjamin, how many witnesses do you intend to present, including yourselves?

MRS. BENJAMIN: Ourselves, um, Carol McKay, um, the accountant. Your Honor, um, Dr. Rideout just had recent surgery and is unable to attend. His type of surgery prevents him from being here, so we'll not be calling him, even though he's on the list. I believe I've named to you --

THE COURT: Okay. And these people will be testifying about--

MRS. BENJAMIN: Oh, and I need to call Mr. Roy as well.

THE COURT: Okay. And their testimony will not be duplicative?

MRS. BENJAMIN: Absolutely not.

THE COURT: Okay. I'm trying to get a sense of time. I want to finish this case today. So, um, how long do you expect your other witnesses to be, other than your own testimony?

MRS. BENJAMIN: Mr. Roy will take a little while because he has a lot of information concerning that period specifically. Um, Carol McKay, I have four or five questions for her. The accountant I have two or three questions for.

And Mr. -- Dr. Bina I intend to question on everything that hasn't been presented already.

THE COURT: Okay. And do you know how long your testimony will be?

MRS. BENJAMIN: Um, no. His won't be long at all. I just have a couple of questions to ask him that was not covered by Mr. Currier, and mine is whatever he thinks he's going to ask me.

THE COURT: Okay. You don't ask each other questions. You just get up there and tell what you need to tell.

MRS. BENJAMIN: Then if you're talking about what I want to tell, I'd say fifteen minutes.

THE COURT: And, Dr., Benjamin, do you intend to take the stand again?

MRS. BENJAMIN: Yes, because I have two questions I have to ask.

THE COURT: You don't ask him questions. You can call him in your case-in-chief if you want to do it that way. I mean, you have the right to call him back to the stand; but he also has the right to take the stand and just tell the jury whatever he feels is relevant.

DR. BENJAMIN: I understand. No, at most, five minutes.

THE COURT: It won't be lengthy? I'm not trying

to pin you down unduly. I'm just trying to get a sense of where we are, okay, because it's quarter of eleven and I am going to finish -- we're going to finish this case today and I want to make sure that I have a sense of where we stand. That's all. We'll be in recess.

(Court recessed at 10:45 a.m. and reconvened at 11:00 a.m.)

MRS., BENJAMIN: Your Honor, Mr. Davis was Dr. Benjamin called Mr. Davis on the telephone to tell him the time to be here. He said he will only come if he's served with a subpoena, and I thought you had kept him on as a witness.

THE COURT: No. I explained yesterday that any witness that was subpoenaed by Mr.Currier was his witness; and once they were done, if you want to call him as a witness, they will have to be subpoenaed. I indicated that yesterday on the record.

MRS. BENJAMIN: That I need to issue --

THE COURT: Any witness that you want to call in your case is your witness and you are responsible for getting those witnesses here.

MRS. BENJAMIN: Oh, okay.

PHILIP ROY, JR., having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CURRIER:

Q. Mr. Roy, that mike is alive in front of you, so to speak.

A. That's quite a snake. Okay.

Q. Your name is Philip Roy?

A. Yes, it is.

Q. Where do you live, Mr. Roy?

A. 33 Elizabeth Street, Presque Isle.

Q. You were acquainted with the defendants in this action, James Benjamin, Jr., and Rebekah Benjamin?

A. Yes, I am, sir,

Q. Were you employed for them at some time?

A. Yes, I was.

Q. And in what capacity were you employed by them?

A. I was employed on several occasions on basically for the buildup of their office on 171 Academy.

DR. BENJAMIN: Excuse me. May I go to the rest room?

THE COURT: Yes, you may.

MR. CURRIER: We're going to wait until he returns.

(Dr. Benjamin left the courtroom. There was a break in testimony from 11:02 a.m. to 11:06 a.m.)

THE COURT: You may proceed.

BY MR. CURRIER:

Q. Mr. Roy, you were employed as the office manager by Dr. Benjamin?

A. That's correct.

Q. And were you the office manager in Caribou?

A. At the first, yes.

Q. That would be January and February of 1994?

A. January, February, and March.

Q. Was that the period of time you were employed, January through March of 1994?

A. As an employee, yes.

Q. Did you also do some work as a self-employed contractor or work for someone else?

A. That is correct.

Q. I'd like to show you Defendant's Exhibit 2D. Have you seen this before?

MRS. BENJAMIN: What is it?

MR. CURRIER: Exhibit 2D.

BY MR. CURRIER:

A. Only when it was brought to my attention late yesterday evening.

Q. Faxed to you last night about 5:30?

A. 5:30, 6:00, yes.

Q. And you recognize this stamped signature on this check on page 2?

A. That would be the stamp of Dr., Benjamin's office for the endorsement of checks.

Q. And who had access to this stamp?

A. Um, three individuals that had keys to the desk that it was locked in. Um, would be Dr. Benjamin himself, Mrs. Benjamin, and Ben Benjamin, which I believe is Dr. Benjamin's brother.

Q. You've been present here this morning?

A. Yes.

Q. And you've heard testimony about a Carl Samuels?

A. That's correct.

Q. When did Mr. Samuels leave the area and go back to the Caribbean?

A. He basically left the state of Maine -- I'm not sure if he went right to the Caribbean right off because he was directed to leave the state just before Christmas or just after Christmas.

Q. Of what year?

A. Of 1993.

Q. So, in February of 1994, would he have been in the state of Maine?

A. Not at all.

Q. Was he involved in the practice?

A. Um, yes, he was. He was considered the office manager to my knowledge, um, at the latter part of 1993.

Q. But after December of '93, he would not have been involved in the practice?

A. Not at all.

Q. Do you recognize the number under the stamped signature?

A. That would be a Key Bank account number or an account number -- I'm not saying it would be Key Bank. I have no knowledge of that.

Q. Do you know whose account that is?

A. I did not. But with a phone call, it could easily be determined.

Q. Is it your account?

A. No. I've never had an account at Key Bank until just recently.

Q. Did you receive any of the funds from this check?

A. No, I did not.

Q. Did you stamp the endorsement of Dr., Benjamin on the check and keep the money?

A. No. None of the employees were allowed to do any deposits or stamp any checks.

Q. Who ran the day-to-day affairs of the Presque Isle office?

A. Mrs. Benjamin.

Q. Who ran the day-to-day affairs of the Caribou office?

A. Myself, with the backup of Mrs. Benjamin.

Q. Were you involved in the initial opening of the Caribou office? And, by that, I mean did you help secure space and lay out where the examining rooms would be and so forth?

A. Correct. In December of '93, we started the process. I was asked to come on board as an employee and working under construction and working with Mrs. Benjamin setting up or getting ready for the Caribou entourage.

Q. Were there any major improvements or construction going on at the Presque Isle office in September, October, and November of 1993?

A. Yes, in that vicinity, and I couldn't tell you exactly what dates.

Q. Were these renovations of the office?

A. Yes, they were.

MRS. BENJAMIN: Which office?

MR. CURRIER: Presque Isle office.

BY MR. CURRIER:

Q. Were you familiar with the furnishings in the Caribou office?

A. Very much so.

Q. Were you familiar with the office equipment?

A. Very much so.

Q. Were you familiar with the office expenses in Caribou?

A. Yes.

Q. As the office manager, would you have had intimate and detailed knowledge of this information?

A. That is correct.

Q. I'd like to show you what we've marked Plaintiff's Exhibit 5A. Have you ever seen this list before?

A. I've never seen the actual list, no. I can't say that I have. I can vouch for some of the things that may be on the list.

Q. It has been represented that this is an accounting of the expenses of the Caribou office. I'd like you to look, please, at the first section which would indicate October of '93. How many paintings or lithographs were hanging in the Caribou office?

A. Um, the Caribou office was not open in October of '93. Um, those paintings, to be honest and recall exactly how many original paintings were in the office, I would have to say no more than five.

Q. Would you take a moment to count the number listed here?

A. I count eleven and a lithograph also, which would make twelve.

Q. Two lithographs, eleven paintings.

A. Oh, I'm sorry. Correct.

Q. Were there two lithographs and eleven paintings hanging in the Caribou office?

A. That is incorrect.

Q. Do you know if the paintings that were hanging there were ever paid for?

A. They, to my knowledge, were never paid for.

Q. In November of '93, there was a claim that a newspaper ad was undertaken to announce the opening of the Caribou office. Do you know if there was ever a bill generated for this amount for this ad?

A. Um, not for that amount, and I don't believe it was in November of '93. I'm not sure of that.

Q. Was there advertising undertaken?

A. Yes, there was.

Q. And approximately what was the cost as you recollect it?

A. As I recollect the cost, it was a full one-page ad in the Bangor Daily, so whatever the cost of the full one-page ad would be I would recommend between $500 and $800, I would assume.

Q. In December 1993, there are expenditures listed here of $12,325. Aside from the rent, it is primarily equipment, office supplies and office equipment. You have a chance to look at that?

A. Yes, I've been looking at it as you speak.

Q. Was there office equipment and office supplies purchased in that time period?

A. Yes, there was. There was the doctor--slips my memory -- that we took the office over from, we bought equipment from this physician.

Q. Was there office equipment and supplies purchased from M&S Office Products and Netherland Typewriter?

A. Yes, there was.

Q. Were they paid for?

A. To my knowledge, no.

Q. What percentage of this office equipment and supplies was paid for to your knowledge, if you can estimate it for us?

A. The Merlin equipment was on a rental agreement, month by month payment.

Q. Item listed at $4,800?

A. Yes, that's correct. That was basically set up as an ongoing and as a business -- when you put a business phone system in, you have a up-front deposit charge and break up the balance in payments. Um, bear with me. The Netherland Typewriter office equipment to my knowledge has not ever been taken care of; and a mirror that I am aware of came from I believe the Caribou office or Mrs. Benjamin's apartment, not exactly sure where that came from. It was not a bought item to my knowledge.

Q. Did you handle any of the disbursement in the office? Did you write checks to pay --

A. Oh, no, I was not allowed to.

Q. Who paid the bills?

A. Mrs. Benjamin paid the bills.

Q. How do you know these items were unpaid such as Netherland's and M&S?

A. A lot of these people were doing business and I was office manager and knew a lot of these people personally. I was getting frequent calls because of friendships with these people to basically ask where the money was for these items.

Q. Would you please look at the January '94 disbursements?

A. Yes.

Q. It shows eleven telephones were purchased. How many telephones were located at the Caribou office?

A. To my recollection, um, six or seven Merlin phones.

Q. These were all under lease?

A. They were, I believe, part of the package. I'm not exactly sure if they were one group package. I do know that several, or two, possibly two or three -- I believe just two phones came from the Caribou office.

Q. There were other items of furniture listed as -- such as a desk for $1,800, a sideboard for $1,200. Do you know if these items were ever paid for?

A. To my knowledge, um, I don't know of any desk that was purchased for the Caribou office or sideboard. I do know that a desk was brought from storage in the Presque Isle area to -- actually, either Caribou or Connecticut. I made one trip to Connecticut to get things, and it's possible that those were there; but not a new desk was ever purchased to my knowledge.

Q. There are eleven trash cans listed. How many trash cans were there in this office?

A. Well, there's two offices, three exam rooms, a waiting room, um, two bathrooms, and the reception area may have had two desks, so --

Q. There might have been eleven trash cans?

A. And I would tell you that most of those were probably brought in. They were not bought to my knowledge.

Q. Now, you were there every day?

A. Every day.

Q. You'd have knowledge if these things were coming and going?

A. Yes, I would definitely have knowledge.

Q. What kind of hours did you keep there at the office?

A. Long. I would periodically take Dr. Benjamin in early in the morning. I don't recall if it was 6:00 or 7:00 in the morning, because he would do paperwork in the morning; and there were times that we left the office at 8:00, 9:00, 10:00, I've seen some 10:00 hours.

Q. So you'd have been there most of the time and know what was happening?

A. Oh, yes, definitely, definitely.

Q. There's a $500 antique copper pot listed in January. Do you have any recollection about that item near the lower third of that second page?

A. Oh, the second page. I'm sorry.

Q. Right. Says antique copper pot, $500.

A. I have no knowledge of that. That would -- copper items, that would be from a joint venture between Mrs. Benjamin and Mr. Potts. Mr. Potts would bring things in for -- I don't know, not --

Q. Display?

A. Correct, to my knowledge.

Q. Do you know if any were purchased?

A. I know there was a possibility of one, I don't know, fig leaf or statue that stood about five or

six feet tall, water fountain, that was talked about to be purchased; but other than that, I do not know.

Q. What was the payroll expense on a monthly basis in this practice?

A. Um, as far as regular employees, um, it was normal everyday payroll. What I mean is the office personnel were getting paid at normal rates as office--

MRS. BENJAMIN: Your Honor, if it would assist them, I have the paper he filled out.

MR. CURRIER: No, thank you, Mrs. Benjamin.

BY MR. CURRIER:

Q. Would $6,500 be the monthly payroll at that office?

A. No, I would say that would be considerably higher.

Q. It listed $6,500 as payroll expense.

A. To my knowledge, the regular employees -- I'm not talking family members, the regular employees, your expenditures for the month, which shouldn't be more than $3,500 to $4,000; and that's a guesstimate.

Q. Were there employees working there who were family members?

A. Um, between the Presque Isle and Caribou office, um, more so floaters between Caribou and Presque Isle, I would say, yes.

Q. All right. Um, in the February expenses at the top of page 2, there is a fax machine listed. Do you know if that fax machine was purchased and paid for?

A. To my knowledge, no. It was acquired and I believe from M&S Office Supply; but to my knowledge, it hadn't been paid for.

Q. Was it repossessed or turned back, if you know?

A I -- when I left, I took it and then subsequently returned it back to the Benjamin's the following day as repossessed means. That's what had happened to it.

Q. Thank you. Mr. Roy, you're here today voluntarily?

A. Very much so,

Q. You're not here in response to a subpoena?

A. Um, no, I'm not.

Q. You were provided with a copy of this check and were asked to attend this morning?

A. That's correct.

Q. And did so voluntarily?

A. That's correct. I didn't want to get involved; but on the possible avenue of criminal -- something

criminal happening to me, I wanted to clear my name.

Q. You were concerned about this check?

A. Oh, very much so.

Q. And the possibility --

A. That's why I'm here and taking about a $500 cut in pay today.

MR. CURRIER: Thank you, Mr. Roy. That's all I have.

THE COURT: You may question the witness.

CROSS-EXAMINATION

BY MRS. BENJAMIN:

Q. We have had a previous association.

A. Yes, we have.

Q. During the time it existed, it was a good relationship.

A. For the most part, yes.

Q. It terminated on bad terms.

A. Um, by your terms, yes.

Q. And we have had subsequent encounters that have been negative since that time.

A. I would assume, yes.

Q. That being clarified, you stated to the Court and to -- oh, I'm doing it again. I'm sorry. Um, Mr. Samuels you stated left in December of '93?

A. By my recollection, yes.

Q. That's what you remember?

A. Yes.

Q. Do you recall while we were in Hawaii together a call coming from Maine to me about Mr. Samuels? Did I discuss it with you? If I didn't, just tell me.

A. I honestly don't remember.

Q. I usually discussed everything that went on. I don't know if I discussed it with you or not, but I wanted to know if you recall.

A. That's correct. You usually discussed everything that was going on with the office or personal with me, yes.

Q. Right. Now, you stated that he left to your memory in December?

A. Again, it was

Q. No, I don't want you--

A. To my knowledge, yes, that was the best of my knowledge. It was the end of December.

Q. I'm trying to help you remember what occurred after that. Do you know where he was living?

A. Um, yes, I do. He was living --

Q. Do you know of your own knowledge who paid the rent at that place where he was living?

A. Yes, you did yourself.

Q. Um, do you know when I terminated the payment of the rent on that place

A. Um, I do not know exactly when because after Carl had left, Ben Benjamin had taken over the trailer.

Q. Do you know when Benjamin took it over?

A. I honestly don't recall.

Q. You don't remember?

A. I honestly don't recall.

Q. Could it possibly have been in February?

A. To my knowledge, I would think it would be in January, during the month of January; and I believe by my recollection that it was sometime either when we were in Hawaii or just after Hawaii.

Q. We returned -- you returned from Hawaii before I did.

A. Correct, about three or four days.

Q. Yes. I stayed until the end of the month. You left around the 20th; is that it?

A. Um, 20th or 24th. I don't recall exactly.

Q. Somewhere in there.

A. Correct.

Q. Do you recall if he was still in town when you

A. To my knowledge, he was not in town.

Q. And I never discussed with you the fact that he was or was not?

A. And, again, I don't recall --

THE COURT: He's testified to the best of his knowledge. You'll have to move on. You'll have the opportunity to testify directly, ma'am, if you want to give those facts about when he left.

MRS. BENJAMIN: Okay. All right. Thank you. When -- this is not about when he left, but something happened at the time he left. Should I ask that?

THE COURT: You can ask that.

BY MRS. BENJAMIN:

Q. When he left, are you aware of a letter he left concerning me at the airport?

A. As a matter of fact, I am.

Q. Yes. Now, I don't have to ask you anymore questions. I can date it by air ticket. Now, you stated that there was no large antique copper pot to your knowledge that I had in association with an artist. That association with the artist, would he have sold to me or given to me an antique copper pot?

A. I would have no -- I wouldn't have knowledge. You would only have knowledge of --

Q. Does he make new products?

A. Yes, very nice products too.

Q. Yes, but is he an antique dealer?

A. I have no knowledge if he's an antique dealer or not.

Q. But you don't believe that that pot was purchased, that it had something to do with Mr. Potts?

A. I honestly don't even know what pot you're talking about.

Q. Oh.

A. Or Mr. Currier is talking about, other than a statue that was sitting in the corner of the patient's waiting room. In all honesty, I don't recall.

Q. No, there was no -- oh, excuse me. Did you see a statue listed on there, on the one he gave you?

A. Again, I don't -- it was just, I believe, a copper pot. I didn't look through the whole list. I just--

Q. Yeah, but what he showed you --

A. Yes.

Q. -- he did not show you a statue or anything like that on the list.

A. He didn't point one out to me, and I was only looking at the things he pointed out.

Q. And the one you're referring to is something that Mr. Potts would make?

A. Oh, yes, definitely.

Q. Now, the number of paintings that were in the Caribou office, I mentioned the first office, Suite 150 do you remember us-- in Caribou--

A. Yes. Very few paintings were hanging on the wall in Caribou.

Q. Where were they?

A. Most of the paintings that you are possibly referring to would be in the Presque Isle office.

Q. Until when?

A. No knowledge of mine if they were ever moved to the Caribou office.

Q. Did you work in the second office, or were you only in the first office?

A. Um, the prior week or two prior to me leaving, I was in the Presque Isle office and Caribou.

Q. No, no, I don't mean that. There were two offices in Caribou.

A. Oh, yes.

Q. You only worked in the Suite 150.

A. Um, the office that I set up was the only office during the period of time that I was employed with you.

Q. And the one you set up was Suite 150?

A. That's correct.

Q. And that suite had a reception room. I want you to acknowledge, please.

A. Oh, I'm sorry. Yes, it did have a reception room.

Q. And one bathroom.

A. I believe it had two bathrooms.

Q. No, no, in the reception room.

A. Oh, there was one in the reception room.

Q. We established yesterday that it had three bathrooms.

A. Two bathrooms.

Q. Three. Mr. St. Peter was here. Well, I'11 show you where they are and you'll recognize them. There was one in the handicapped off the surgical room. There was one for employees behind the nurse's desk, and one in the entry for-

A. You are correct. There was three bathrooms. I apologize.

Q. Now, in that reception room where Mr. Potts' items were, were there any paintings there?

A. Um, there were paintings that were purchased from the physician that we took over the office from. There were no--

Q. From Dr.

A. Dr. Wingard, and those were just basically photographs and copies. They were not --

Q. Prints?

A. They were actually not paintings.

Q. Not originals. They were prints.

A. Not at all.

Q. In the reception room where -- not the reception room. Where the secretaries were, that long room there.

A. Yes.

Q. Were there any paintings in there?

A. I believe I recall of one.

Q. Was it an original?

A. No, it was not.

Q. What was it?

A. And I don't recall. I just remember something seen on the wall that was purchased from Dr. Wingard and it was just, just a--

Q. But that was not the original?

A. No, there was no original there.

Q. Well, wait a minute. I'll show you where there was. Down the hallway, there was a small original painting of a man in a fishing boat.

A. There were, I believe, two or three that were bought from Dr. Wingard at approximately $25, $30, apiece.

Q. No. Those were prints. This one particular one, do you recall it?

A. No, I do not. I recall three --

Q. If you don't recall it, that's fine. I don't ask you to do anything you can't do. Um, you said the telephone in that office, the Merlin system --

A. Yes.

Q. -- was a leased system.

A. I -- by my recollection, we had a deposit to make on the system of my recollection of about $2,000 before they would put the system in; and then it was set up in sequential payments.

Q. But that was leased?

A. I don't know if it was actually leased. I was not privy of that information other than I do know it was set up as a payment arrangement.

Q. Right. I wasn't asking about that. I thought I understood you to say it was rented equipment. It was not purchased. You did not say that?

A. I don't know if you have actually --

Q. No, I meant when he asked you the question.

A. I don't know if it was purchased or leased. I know payment arrangements were made to have the system paid.

Q. But you don't know whether it was purchased for $4,800 or leased?

A. It was never to my knowledge actually purchased for $4,800, no.

Q. How much did it cost in total?

A. I do not know exactly the full amount of the Merlin system.

Q. But you participated in the entire setup of that office?

A. That is correct, and there were some things that I was not privy to.

Q. Did we delay our trip to Hawaii on account of us setting that up, you and I?

A. I don't know if the trip was actually delayed on that reason, no. I would say, no, it was not delayed on that reason.

Q. But it was delayed.

A. Yes, our trip was --

Q. Okay, It doesn't matter why it was. You said that the prices on there for M&S and Netherland were never paid?

A. To my knowledge. I was receiving phone calls and personal visits from these people.

Q. While you were there?

A. That's correct.

Q. I agree that that was happening while you were there. How long were you there?

A. Um, approximately three months in term.

Q. How long?

A. Two and a half months.

Q. How long did you actually work in the Caribou office to set up, three months you say?

A. Well, no. I actually helped initiate and start the setup in December.

Q. Yeah. Okay. And you said that a mirror was never purchased, that it came either from --

A. I'm not sure exactly where that mirror came from. There was a mirror at the end of the hallway. Where that was purchased or if that was purchased -- I believe that came out of either your apartment or the Presque Isle office to my knowledge, There was a frame there --

Q. Why do you think that?

A. Because I recall us taking it off a trailer that was towed by my vehicle.

Q. That particular mirror that was in there? Would it refresh your memory to look-- oh, I don't have it with me. Do you recall purchasing a mirror from Mrs. Wingard?

A. In all recollection, I don't recall; but it could be, because there was a bunch of things on a list.

Q. Hanging in exactly the same spot that it hung in that office?

A. That could be. I don't have a recollection, but it could be.

Q. Let me tell you, do you remember her saying there is a hole in that wall, that's why I put that there; and I turned to you and said be a good idea if we kept it.

A. That could be. Again, I'm not sure. Usually, I have a very good memory, but I don't believe

Q. Well, this was a while ago.

A. It's been a while.

Q. Um, you said that you had never handled any of the funds in Dr. Benjamin's office.

A. No. I was turning over all checks to yourself.

Q. Do you recall--

A. Or Dr. Benjamin actually.

Q. Do you recall having opened a checking account at People's Heritage Bank here in Caribou?

A. Yeah, that's correct. I was directed by yourself to open a checking account.

Q. For you and Dr. Benjamin to sign on?

A. That's correct, and I believe that was done the latter part of March.

Q. And did you pay at least $1,000 rent check out of that account and you personally delivered it to Mr. St. Peter?

A. I personally delivered a $1,000 check and I believe it was a --

Q. Under your signature?

A. -- a check that I opened up the account with. Again, I don't know if I actually wrote the check. no knowledge.

Q. Under your signature?

A. It could have been. I have no knowledge.

Q. Um, I don't want to get into all the little details; but he mentioned eleven trash cans and were they actually purchased, and you said you didn't think they were.

A. Um, to be honest with you, there was a multitude of trash cans that I--

Q. Where did we get things like that, like trash cans?

A. Excuse me. Um, storage bin in Connecticut. The your office -- some of those came from --

Q. I mean, where did we purchase from?

A. Could have come from P&E Distributors, M&S Office Supply also.

Q. In that particular office, we had more than eleven trash cans. You can think about it and see. The office where you were --

A. I think there were several, five or six, there when we moved in.

Q. Yeah. We brought additional and purchased additional.

A. Or they gave them to us.

Q. Who gave them to us?

A. The Windgard's left them in the office.

Q. Oh, I didn't realize that. They did? But there were five or so left in there?

A. Well, I don't know how many were left in the office.

Q. Well, it's kind of important because you said that eleven were not purchased.

A. I can guarantee you eleven were not purchased.

Q. By whom?

A. By me, because I would have been orchestrated by you to actually get anything. Nothing was done without your approval.

Q. If I were to show you an invoice that had eleven trash cans purchased from either P&E or the other company within the time that we dealt with Fitzgerald's --but, um, are you aware of it's no longer that things being purchased there?

A. Oh, very much so.

Q. And if I were to show you an invoice -- I don't know that I can get it, but those companies are right here in town and I'll make every attempt to. If I can show you that purchase during that time period, would that make a difference in your assessment of what was purchased with them?

A. I will tell you, if my name is on it, I would be knowledgeable of those purchases, and seeing the invoice might strike my memory. Trash cans are trivial.

Q. There's something that puzzled me. He asked you if there was construction at the Presque Isle office in September of '93.

A. I don't recall exactly when. I was employed by a construction at the time. When actually construction started or finished, I can go back and find out but -

Q. I could give you a good guess. You remember repairing things for Dr. Benjamin's office that had been water damaged?

A. In which office?

Q. In Presque Isle. The company you worked for.

A. Very good possibility, yeah, because there was a pipe that had leaked.

Q. And that was in February of 1993.

A. I have no idea.

Q. Oh, I'm telling you it's documented February of 1993.

A. That may be. I have no idea.

Q. Was it immediately after that?

A. What was after that?

Q. That the construction on the Presque Isle office took place.

A. Short time there, you were actually located in the other office. What number I don't know. That's when we actually started our conferences on getting the project underway with a joint venture with Mr. Talbot. By the way, that was a joint venture as well and you're aware of it?

Q. Oh, very much so. I was aware of most anything going on there.

A. It was discussed with you personally?

Q. Most everything was discussed with me.

Q. Yes. And Mr. Talbot, did he ever discuss it-- yes, he did. He had no problem at first, did he

THE COURT: You'll have to move on. You'll have to move on. Next question, please.

MRS. BENJAMIN: Okay. Move or --

THE COURT: You're going into details of Mr. Talbot and another issue and I want to move on so we can try this case.

MRS. BENJAMIN: Yeah.

BY MRS. BENJAMIN:

Q. Mr. Talbot was the person I was involved with in that building. That's the only mention of his name. During that construction period was March and April of 1993?

A.. That may be.

Q. We had a --

A. I don't know exact dates.

Q. We had a date to complete and open the new office. Do you recall that?

A. Yeah. There was a contract, and I don't have a copy of that.

Q. That was in the first quarter of the year.

A. And, again, I'm going by your statements. I don't have actual paperwork.

Q. That was something you were directly involved in?

A. That is correct.

Q. And your company completed that office?

A. Well, that's correct, in record time.

Q. And to your knowledge, is that the only time any construction took place at 171 Academy Street?

A. Other than a few things that had to be tidied up a month later.

Q. But construction.

A. Major construction, yes.

Q. That was the only time?

A. Major construction, to my knowledge.

Q. Were you in a photograph of that opening?

A. Yes. As a matter of fact, it was in the paper at the grand opening.

Q. So whatever that date of completion is in that -

A. We were not a hundred percent completed during that time but --

Q. But we occupied the office during that --

A. You had started to occupy the office in that time frame.

Q. Right. And if that date were before May of that year, that would be approximately the time that the construction took place there?

A. Very good possibility.

Q. You said that the ads in the newspaper cost only $500 to $800?

A. To be honest with you, I have no idea what a full page ad costs in the Bangor Daily.

Q. What you thought it might cost?

A. I would have to refer back to someone from the Bangor Daily and ask how much it is. To my understanding, it is about $500 to $600 for a full page ad.

Q. If I gave you information to the contrary, would that help?

A. Would help me. I have no --

Q. When you say you guess that is, that's the -- a full page ad in the Bangor Daily just in Aroostook County is different to a full page ad that covers the state of Maine. Would you not agree?

A. I have no idea. I don't take full page ads out.

Q. The -- when you make a statement that it costs $500 to $800, there has to be a basis for it.

A. Understand, I said that in a relative fashion.

Q. Oh, okay.

A. Not that it was an exact figure, because I have no -You asked -- he asked you about salaries during that period, employee salaries. That would be in the first and second quarter of 1993.

A. I have no idea of any salaries in '93. '94 I do.

Q. '94? First quarter? And what you said about the salaries was just a guess. It's not actual information.

A. I new relatively what the employees were making in the Caribou and Presque Isle office, the actual employees, not family members.

Q. No. I mean Caribou. We're concentrating on Caribou.

A. If we're concentrating on Caribou, yes.

Q. Between January when it opened and March when you were no longer there?

A. Correct.

Q. And you have knowledge of what was the salaries?

A. Yes. One receptionist, one nurse part-time, and myself.

Q. In the Caribou office, there was --

A. I was making the equivalent of approximately -- when I was able to get paid -- approximately $500 a week. The receptionist was making approximately $200 to $250 a week relatively, and I don't know the exact figure she was making,

Q. Um, it was yourself, Tammy Gockley (sic), Theresa Case was there.

A. Theresa Case was the nurse between Presque Isle and Caribou and was there two to three days a week.

Q. Whenever Dr. Benjamin was there.

A. Most of the time, that's correct.

Q. Um, that was Theresa Case, yourself, Tammy Gockley, (sic) and whom else?

A. That is it as far as full-time staff. There was a transcriber that was out of Presque Isle that

would do transcribing, but that was out of Presque Isle.

Q. She's not included in this. And the cleaning people.

A. The cleaning people were hired.

Q. Mm-hm .

A. They were like subcontractors, I guess you might as well call them.

Q. So you wouldn't put them on the salary.

A. Not at all, They are not salaried employees.

Q. And, oh, we have somebody here that -- oh, Scott Parsons. Oh, I know who that was. He worked between the two offices too on filing papers. You know, the person who put the papers in the chart. Oh, the high school student?

Q. Yes.

A. Yeah.

Q. And that covers--does that cover everyone in the Caribou office during that period?

A. Yes. As I said, there was three of us.

Q. Other than family members.

A. Correct

Q. And some of the employees in the Presque Isle office actually worked in the Caribou office some of the time, but the Caribou people stayed in the Caribou Office basically.

A. Basically, other than training.

Q. Other than--

A. Other than for training.

Q. Okay. I think I've covered everything. When you said you hadn't handled any money, you forgot about that People's Heritage account?

A. No. I knew I had opened an account at People's Heritage on your request. Basically, the request was to facilitate the possibility of taking over the Presque Isle and Caribou office and taking care of all the finances for the offices, which never transpired, other than that one time.

Q. Oh. I have another question for you, and then we're done. On Carl Samuel, were the two of you personal friends?

A. Honestly, no.

Q. Did I ever request that you go to People's bank and check some things out about him?

A. That's correct.

MRS. BENJAMIN: All right. I can't go into anything further than that. That's all on direct.

THE COURT: Thank you. Do you have any other questions?

DR. BENJAMIN: I do. On direct?

THE COURT: No.

MR. CURRIER: I'd like redirect if I can, if Dr. Benjamin is waiving the opportunity to cross certainly.

DR. BENJAMIN: I'm not waiving my opportunity.

THE COURT: Do you have questions of the witness?

DR. BENJAMIN: I'11 ask him on direct

MRS. BENJAMIN: He'll ask him to come back.

BY MR. CURRIER:

REDIRECT EXAMINATION

Q. I have one or two items I'd like to cover with you, Mr. Roy. It was brought out on cross-examination that you were, if not intimately involved in negotiations about some joint venture with Doug Talbot, you were personally aware of it.

A. I was aware of joint ventures.

Q. Were you aware of any joint ventures with Dr. Bina? To my knowledge, there was no joint venture other than Dr. Bina was purchasing paintings under Rebekah's personal business.

A. You see him come to the office one day and purchase a painting?

Q. As a matter of fact, yes. One was delivered to his office.

Q. How many times did Dr. Bina visit the Caribou office? Um, to my recollection, to be honest with you, I don't think I've ever seen Dr. Bina at the Caribou office. Were any employees at the Caribou office, his employees, or under his direction?

A. Not at all, I knew --

Q. I'm sorry. When this space was acquired here in Caribou, was there some talk of bringing in a second doctor?

A. Um, there was several, talk of opening up a clinic and bringing other physicians to facilitate more businesses in a walk-in clinic.

Q. What was the specialty of this other doctor?

A. You have to excuse my abbreviations and acronyms, OBGYN, someone that takes care of gynecology and --

Q. OBGYN?

A. Yes. Thank you. I don't mean to be

Q. Was there any talk about bringing Dr. Bina, a urologist, over to Caribou into this office?

A. Not to my knowledge. I know they were very good friends.

Q. There was never any discussion about him sharing space over there?

A. No, not at all.

MR. CURRIER: Thank you, Mr. Roy. They may ask you some more questions.

MRS. BENJAMIN: I have a few more questions.

THE COURT: Are you going to recall this witness? Is that what you want to do?

MRS. BENJAMIN: I do, but can I ask him questions that apply --

THE COURT: Why don't you ask him all of the questions you have and --

MRS. BENJAMIN: Then I don't have to talk to him now?

THE COURT: You don't have to bring him back. If you want to get evidence before the jury, you can ask him questions.

MRS. BENJAMIN: I can do it now?

THE COURT: You can do it now.

MRS. BENJAMIN: Oh, thanks.

THE COURT: You won't have to call him back.

MRS. BENJAMIN: Thanks. I appreciate that. I know you do too.

BY MRS. BENJAMIN:

RECROSS-EXAMINATION

Q. Um, he just asked you about Dr., Benjamin making the office so he could bring another physician in.

A. That is correct. I'm sorry.

Q. He -- and there was a discussion about a second physician being in the office,

A. Um, more than one physician.

Q. Right. But there was a discussion about a second physician being in the office.

A. Um, yes, a female physician.

Q. Yes, and you said OBGYN.

A. If that's a terminology for gynecologist.

Q. That's for gynecologist, but I think I know what you're saying I believe is accurate except as to the specialty.

THE COURT: Ma'am, just don't comment on his testimony. You'll have a chance to take the stand. Just ask your question directly.

BY MRS. BENJAMIN:

Q. Is it possible for that physician to come in was a pediatrician?

A. That was one of the avenues that you were looking at, yes.

Q. Mm-hm. The purpose of us increasing the size of the office was to accommodate more than one physician and have a total practice there in that particular Caribou location.

A. Yes. The direction of that was to head into a walk-in clinic with a pharmacy, hearing impaired, the whole nine yards. We actually went over to talk to the people next door to see if they wanted to be a part of it.

Q. Right. And there was considerable discussion about putting that practice together. During that time, did I mention any other physician's name to you?

A. Any other physician?

Q. Any other physicians that were being recruited to come into the Caribou office?

A. You approached Dr. Wingard and you also talked to a doctor in Presque Isle, Dr. Rideout. Rideout I believe. Maybe it's not. It's a doctor -- it's a physician that's now practicing in Canada. His name slips my memory. It's not Rideout. Maybe it's --

Q. I don't think -- I mean, what I'm asking you, physicians that we were going to bring in to make that walk-in clinic, did I mention any of those physicians' names to you?

A. Just several that I just mentioned.

Q. You mean Dr. Wingard?

A. Dr. Wingard was one that you had commented that you'd like to get him out of the emergency room because he'd be great for a walk-in type scenario for clinic.

Q. Dr. Wingard? Dr. Wingard is a surgeon.

A. I' just telling you what you had said.

Q. Oh, well, okay. If that's what you --

A. He was also over at the emergency room to be the emergency room physician,

Q. Are you aware that Dr. Wingard was leaving the area at the time?

A. Not to my knowledge.

Q. Okay. And there is no other physician's name that you have?

A. Um, again, it was a physician, I don't remember his name. He lives in Presque Isle and, um, he's no longer practicing to my knowledge in the Presque Isle area, but practicing in Canada.

Q. In Canada?

A. And, again, I don't --

Q. But you don't remember his name?

A. If his name was said, I could --

Q. But I discussed him with you?

A. Yes, definitely.

Q. As a possible person to join there?

A. Oh, definitely.

Q. And Dr. Rideout?

A. Again, that the physician I' talking about.

Q. Dr. Rideout is from Fort Fairfield, if that helps.

A. No, that's not Dr. Rideout.

THE COURT: I'm sorry to interrupt, but this is a claim between Dr. Bina and a claimed joint venture with Dr. Bina and we don't really have to go into a lot of discussions about other plans of other ventures. I want to confine this case to specifically you and Dr. Bina and a collection case and a joint venture, and I don't really want to go into a lot of collateral details unless it's absolutely necessary. You're free to question him about anything he's testified to if you want to impeach it or show his memory is not correct, but there are a lot of details about a lot of things we don't have to know about because they aren't related to this case.

So, I want to confine the questions, even though there might be inaccurate information, you can recollect, you can phrase your question so that he realizes that he's remembered

something wrong; but I don't want to go into a lot of details about things that aren't related to this case, okay? So, you'll have to -- you'll have to think about your questions. Ask him specifically what it is you want to accomplish I that relates to this case.

MRS. BENJAMIN: Okay. Should I explain to you what I was trying to do and you tell me --

THE COURT: Why don't you just ask him questions directly? I mean, you have the opportunity. You can cross-examine him. You can phrase your questions so he answers them yes or no, or you can refresh his recollection by bringing information in to see if he remembers what it is -- he may remember things; he may not. You have the opportunity to refresh his memory on those things; but a lot of the details beyond that are not important to this case, okay?

MRS. BENJAMIN: Okay.

BY MRS. BENJAMIN:

Q. Okay. My purpose then of asking the question is I want to know if you know of a single name of a physician to whom I gave an invitation to join the joint venture that was taking place in Caribou. Is there a single physician's name that you personally know I or Dr. Benjamin invited to join there?

A. There is. And if I had a phone book, I could give you the exact name of that gentleman.

Q. There is one person? There is a person?

A. Yes.

Q. Okay. And you know of your own knowledge that I or Dr. Benjamin invited him to come in there?

A. Yes. We had a meeting in Dr. Benjamin's office in the back of the room. He came in,

Q. In which office?

A. In the Caribou office, in Dr. Benjamin's personal office in Caribou; and, um, also, he came in on several occasions and to see how things were going and there was talk about him being able to come and help Dr. Benjamin.

THE COURT: You' re going to have to move on. That doesn't relate to Dr. Bina. You'll have to move on.

BY MRS. BENJAMIN:

Q. And the answer was yes and that's enough. The persons involved in decision making in the Caribou Is office from start to finish was myself and Dr. Bina 17 -- Dr. Benjamin, not Dr. Bina, Dr. Benjamin and yourself and whom else?

A. I would make requests. Everything came from you.

Q. But nothing in the decision making about whether or not Dr. Bina was involved, Dr.

Benjamin was involved, or anything that had anything to do with you?

A. To my knowledge, Dr. Bina was a friend of Dr. Benjamin's and that you had dealings with him with paintings. Other than that, Dr. Bina wasn't associated with --

Q. Mr. Roy, I don't want you to get me in trouble. Just answer yes or no.

A. Restate your question, please.

Q. Did anyone other than yourself, myself, and Dr. Benjamin make decisions concerning what went on in the Caribou office?

A. I have to correct that question only for the fact that I did not have any decision making.

Q. No, don't correct it.

A. No, there was no one else,

Q. Now, do you consider you had any decision making concerning that?

A. The only decision making that I had was authority through you,

Q. But if I didn't discuss it with you, you didn't know about it.

A. If I did not -- if you did not discuss it with me?

Q. Mm-hm .

A. I knew a lot of things that were going on that you never discussed.

Q. But from the -- that's not the answers -- that's the --

A. You're asking me if I made decisions on my own?

Q. Yes.

A. That's incorrect.

Q. You did not?

A. I was not allowed to.

Q. That's what I wanted to know. You made no decisions?

A. Not without consulting yourself.

Q. None?

A. If I recall one conversation that we had, um, that was --

Q. You're -- okay, I have it clear. You didn't make any decisions.

A. I'm not Saying I didn't make any decisions, but I didn't make any decisions without your authority.

Q. Right. And at that -- this is away from that. Oh, that's right, you said I could. Um, during the time we were in the Caribou office, did you

participate in any way with Dr. Benjamin, other than just being there, running the office? Example, driving him to the office?

A. Of course.

Q. You associated with him very closely during that time?

A. Very much so. That's why I made the statement that as far as personal and also business, I knew just about everything that was going on.

Q. Okay. And during that time, you considered Dr. Bina. Dr. Benjamin's friend?

A. There was no doubt about that.

Q. Were they close friends?

A. I would say that they were friends. I don't know how close they were. I was not a privy friend of I knew Dr. Benjamin's -- I'm sorry, Dr. Bina's. Dr. Bina very well because he was treating my family.

Q. But you believed them to be friends?

A. Oh, without a doubt.

Q. I didn't realize I was going to get to question you right now, so I don't have all the things I have for you. Do you have any personal knowledge, any personal knowledge of any of these six checks other than what was shown to you last night?

A. I do not. The first time I saw the check was

MRS. BENJAMIN: Remember, we can't keep talking. Okay. Thank you.

MR. CURRIER: One question, your Honor.

THE COURT: I'm going to let Dr. Benjamin question him first.

MR. CURRIER: Okay.

DR. BENJAMIN: May I take a five-minute recess to converse with Mrs. Benjamin?

THE COURT: With who?

DR. BENJAMIN: I'm sorry. My mother, just a five-minute recess to converse with my mother.

THE COURT: You can bend over and talk with her if you want.

CROSS-EXAMINATION

BY DR. BENJAMIN:

Q. Just a simple question. You and I have -- I'll introduce myself as James Benjamin, and you know me.

A. Very much so.

Q. Yeah, very much so. And you know we accompanied each other on several different -- well, on several different things in the past, and we -- in 1993, you --

DR. BENJAMIN: I guess it's a collateral issue.

THE COURT: I beg your pardon?

DR. BENJAMIN: I -just realized from what you instructed us on it's a collateral issue.

THE COURT: It's fine. Just move on to whatever you want to ask him about.

DR. BENJAMIN: Okay.

BY DR. BENJAMIN:

Q. We worked very closely together.

A. Yes, we did several trips together.

Q. Several trips together in 1993, but I did not discuss all my business activities with you in 1993; would you not agree?

A. I have no idea. I was aware of certain things that were going on.

Q. But not everything that I had going on.

THE COURT: Okay. He wouldn't be able to tell you --

A. I have no idea.

THE COURT: -- what he didn't know.

DR. BENJAMIN: Yes, I just -- that was the point I wanted to bring out.

BY DR. BENJAMIN:

Q. One thing I wasn't privy to because I left while you were testifying --

MRS. BENJAMIN: I cannot hear you.

THE COURT: Would you speak up?

BY DR. BENJAMIN:

Q. One thing I was not privy to, how were you contacted to come today?

A. How was I contacted?

Q. Yes.

A. Mr. Currier, whom I may say has been an opposing attorney of different cases, um, knows my employer, is an attorney of my employer and, um, thought that I should be aware of something that was said in court, that it could possibly be derogatory towards me; and I consider myself very honorable and I wanted to clear up my name if there was something derogatory said about me.

DR. BENJAMIN: Okay. Thank you, very much.

THE COURT: Mr. Currier, you have any other questions?

MR. CURRIER: One question.

BY MR. CURRIER:

REDIRECT EXAMINATION

Q. Is the name you re grasping for David Scullion?

A. Yes it is.

MR. CURRIER: That's all.

THE COURT: Any other questions?

MRS. BENJAMIN: No.

THE COURT: You may step down. The witness will be excused. That's the Court's understanding this witness is going to be excused.

MRS. BENJAMIN: Yes, we do not need him. Thank you for your latitude.

MR. CURRIER: Thank you, Mr. Roy. Your Honor, plaintiff is prepared to rest.

THE COURT: You're resting?

MR. CURRIER: Yes.

THE COURT: I'11 ask you to remain and we're going to recess the jury for lunch. We'll resume at about 1:00.

(The jury left the courtroom at 12:03 p.m. The following proceeding was held out of the presence of the jury.)

THE COURT: The Court has received a copy of the fax regarding a subpoena that was issued, and it was referenced yesterday from People's bank. They were subpoenaed on May 28th, Tuesday, apparently when we started the case; and they were requested to provide check number --

MRS. BENJAMIN: Your Honor, we no longer need them.

THE COURT: Okay. I wanted to address that issue. That's no longer an issue. Also, there was a discussion that you needed to recall some witnesses to ask three or four questions. Um, and I just want necessary to recall them because to make sure it other than the factual dispute that comes from recollections, there seems to be very few factual disputes about records that exist. So, I want to find out whether it's really necessary to require you to bring these people back. Actually, what I'm asking is whether Mr. Currier is willing to agree to certain things, but I don't know what they are yet, so I'm going to bring them up. What do you need Carol McKay for?

DR. BENJAMIN: On entries, there are two entries, three, that I have a question about that she can address; and I need to know if she kept any other records that have not been made available to us during that time period.

THE COURT; Okay. And the entries that you want to question her about are in the ledger?

MRS. BENJAMIN: We don't -- we didn't receive January and February and March. She would have kept those records.

THE COURT: Okay. But you're going to question her about three specific entries?

MRS. BENJAMIN: Yes.

THE COURT: Are they in a ledger?

MRS. BENJAMIN: I don't have the ledger.

THE COURT: But you do have information,

MRS. BENJAMIN: Yes, I do.

THE COURT: They come from checks or what?

MRS. BENJAMIN: Yes.

THE COURT: Okay. Um, and Dr. Bina cannot answer those questions?

MRS. BENJAMIN: I don't know. My understanding was he did not do anything with the paperwork.

THE COURT: Okay. And the checks, does did he provide those checks to you? Mr. Currier -- did he provide those checks to you?

MRS. BENJAMIN: Yes, he did.

THE COURT: Okay. And you have to ask -- and who else was it you wanted to -- Dr. Rideout is not going to be called?

MRS. BENJAMIN: No.

THE COURT: Is there anybody else but Carol McKay you intend to recall?

MRS. BENJAMIN: No. Wait a minute. Mr. Davis. Mr. Davis, the accountant.

THE COURT: Okay. What was it you wanted to ask Mr. Davis?

MRS. BENJAMIN: I want him to authenticate the tax returns that were given to us by Dr. Bina.

THE COURT: Okay. Is that all? Because Dr. Bina can authenticate his tax returns or Mr. Currier can stipulate to them.

MR. CURRIER: And I will.

MRS. BENJAMIN: That he did prepare them?

MR. CURRIER: Surely.

MRS. BENJAMIN: These were prepared by -- well, actually, Mr. Bina's, company that he worked for, but he did them himself?

THE COURT: I don't know that, Do you know that?

MR. CURRIER: Prepared by Chester Kearney.
DR. BINA: Chester Kearney, and Mr. Peter Davis my primary accountant.

MR. CURRIER: We'll stipulate to that.

MRS. BENJAMIN: Then we don't need him.

THE COURT: I need to know so there are no surprises and we don't enter into a stipulation -what's the purpose of the stipulation?

MRS. BENJAMIN: These are entered as the actual tax copies of the actual tax returns that I went to look for it as to dates so I could see when -- they

are not signed or dated, none of the things that I received.

THE COURT: Right.

MRS. BENJAMIN: And my understanding is they have to be signed and dated in order to be sent to

THE COURT: Okay. So you wanted to do that to authenticate them?

MRS. BENJAMIN: Yes. I want to know the date they were done.

MR. CURRIER: Mr. Davis testified yesterday they were filed prior to April 15th.

DR. BENJAMIN: He stated that for 1993 tax return, but not for 1994. He was not certain whether it was the spring or the summer, and the date is very important.

THE COURT: Okay. The stipulation won't solve that problem.

MRS. BENJAMIN: No, So then --

THE COURT: Okay. Do you know that he's going to know the answer to that question today, because he didn't yesterday. In other words, unless somebody tells him to find out that information --

MRS. BENJAMIN: Did you tell him to find out that information

DR. BENJAMIN: I asked him. I called him this morning.

THE COURT: Is that the only fact you want to know, because maybe Mr. Currier can have his client call him, find out the exact dates, find out and stipulate to it.

DR. BINA: It was done before April 15th.

THE COURT: Well, you may have to get an exact time. I also have to know whether there is any other purpose, whether you're authenticating to introduce them or --

MRS. BENJAMIN: I want to introduce them as to time frame and occurrences around that time frame.

THE COURT: The occurrences?

MRS. BENJAMIN: Have to do with the checks.

THE COURT: Testimony about those occurrences will come from you or Dr. Benjamin as opposed to the C.P.A.; is that correct? Because he won't know. He said he didn't see anything about the checks. Would you find out over lunch?

MRS. BENJAMIN: I understand what your question is, yeah, and you're right.

MR. CURRIER: If we can reach the accountant, we will; but I understood he was going to be in Houlton part of this week. That's why we held him here.

DR. BENJAMIN: No, I just spoke to him. He's at home here in -- I mean, he's home in his -- his home and business are at the same address. I just spoke to him.

MR. CURRIER: I want to alert the Court, I don't think any other witnesses are going to show up here today.

THE COURT: She just testified she wasn't going to call any other witnesses.

MR. CURRIER: I think an effort was made to try to serve some of them with a subpoena but --

THE COURT: She just indicated she's not going to introduce anybody else; but what I will ask you to do is find out the date of the tax return, unless you want the accountant brought back here or they are going to try to subpoena him back here. And if you can come to an agreement, please do it. If you can't, then the Benjamin's are left to their own recourse in having a witness here. The record should reflect I've had this case scheduled since -- Madam Clerk, could you remember? Do you remember?

MRS. BENJAMIN: Carol McKay was served.

DR. BENJAMIN: Yes, she was served.

MRS. BENJAMIN: For 11:00 today.

THE CLERK: It's in the file.

THE COURT: The case has been scheduled for three or four months in advance, and I did that to avoid last minute problems; and when I keep moving on, that's why I'm doing that and why I'm not taking recesses during the trial to prepare, because the case has been scheduled for months

and months and months. Um, so you'll check with that, Mr. Currier?

MR. CURRIER: My paralegal will go out and call now and see if they can determine a date.

THE COURT: If you can reach a stipulation, then he won't have to show up; and if you can't reach a stipulation, then they are left to the subpoena. And Carol McKay apparently is under subpoena?

MRS. BENJAMIN: Yes.

DR. BENJAMIN: Yes.

THE COURT: And she's served?

DR. BENJAMIN: She's served.

MR. CURRIER: I'm not sure if she was properly served. I don't know that she was served with witness fees and mileage check and so forth. Seems to be --

THE COURT: You know if she wasn't?

MR. CURRIER: I know that she was not.

THE COURT: Okay.

MR. CURRIER: In fact, I would represent to the Court, she called me late last night that she had been served with a subpoena but no check for fees or costs. I advised her to call her attorney and discuss it with him, She advised me that her attorney was Richard Langley and she would call

him early this morning and if there was a problem, he would call me, and I haven't heard from him.

THE COURT: You are bound to know the rules to serve people properly, but this isn't a game.

MRS. BENJAMIN: If we served her improperly, we'll have to go without her.

THE COURT: Pardon me. Go ahead.

MRS. BENJAMIN: I said if we have served her improperly, we'll have to go without her. We take the consequences of our ineptness.

THE COURT: The other side, it isn't a game. If she can be here and they are prepared to pay her, then she should be here. Where is she, Presque Isle?

MR. CURRIER: I have no idea. I had her here under a subpoena the other day. She returned under that subpoena. All I know is I got a call late last night.

THE COURT: I'm going to leave it at this. If she is properly served, she's supposed to be here. If she's not properly served because you haven't complied with the rules, then you're simply left without a witness.

MRS. BENJAMIN: We're satisfied with that.

DR. BENJAMIN: Yeah, we're satisfied. Thank you.

THE COURT: We'll be in recess.

(Court recessed at 12:12 p.m. and reconvened at 1:05 p.m.)

THE COURT: Plaintiff rests?

MR. CURRIER: Yes, plaintiff rests.

THE COURT: Thank you. You may proceed.

MRS. BENJAMIN: Your Honor, where should -- should I just sit right up here?

THE COURT: Right there is fine, sure.

REBEKAH BENJAMIN, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MRS. BENJAMIN: Since -- I want to give you some statements from me to you about what I recall during the time in question, September 1993 through April of 1994. During those months that I just related to you, at no time did I ask Dr. Bina for a loan and at no time did he offer me a loan. The only moneys that I'm aware of between Dr. Bina and myself is $5,000 in this case, $5,000 in October and $5,000 in November. Those checks were in my hand.

They were -- the first check was delivered to me by Dr. Bins, and the second check was delivered to me by another member of the staff; and, unfortunately, I don't recall who. I came in. It was on the desk where I sat. And it was delivered in November, very near that date, and it was directly after -- whether it was the 16th or 17th or in there; but it was directly after Dr. Bina had informed me of some things going on and that I had better get an advertisement in immediately, which I did.

I called and got the ad set and wrote it up myself and took it down to -- first I called the bank (sic) at the Presque Isle office and I went there with the funds and I simply put the ad in to cover not just Presque Isle, but all of -- as far as that paper went in Maine, and it was for more than one day. As I recall, I think the ads ran -- you put them in sequence and they would run in sequence. It had to be the same ad but on more than one day.

Um, the check in January was not given to me. I do believe it came into the office, but I didn't see it. By the time I returned, it had been dispensed with; and I have no direct knowledge of anything that happened with it.

Um, the other checks that came into the office, February, I believe there were two, and one in March, did not come to me. I could have been in town at the time, but they didn't come to me. I don't recall having seen them.

The check in September for the painting, I got that. The check in October for a group of paintings, I got that one. The check in November for the ad, I got that one. I spent only $2,000 or so from that for the ad. The remainder of that check went to the cost of opening the building that Phil and I went and found, Phil Roy and I found.

January, when that check came in my name, that was signed by -- with my name and then signed by Dr. Benjamin that he said he signed my name for, I had no knowledge of it at all. After all of this started to come to fruition and wasn't going to go the distance, um, I did call Carol, as she testified to, and asked her if checks -- what checks were put in my name and what dates they were, and she told me, and I told her at that time why I needed to know because the venture was not going forward and I needed to know what to do about it because I at the time was a dependent of my son, as they have told you.

I was not -- I had had an automobile accident in January of 1990, and I had been unemployed and for three years was in that wheelchair. Then I got out of the wheelchair and came back and started to work with my son, My husband and I were divorced. We're now remarried. We were divorced for five years. During that time, he gave me alimony for -- I had three minor children and myself, and he gave me $3,000 a month to sustain myself with, and I did not -- I was not employed by my son at such that he gave me alimony; but whenever he was without someone to help run the office, I would go and do whatever was necessary to make it work.

I have no skills such as that. I'm an artist, and I deal in art only. I wasn't able to practice my profession in its fullest since the automobile accident. It was January 20, 1990. But I do have shows I've had five since then, I believe; and three of those shows have been here in Presque Isle. Now, these are not money-makers, the shows that I have. Actually, they cost money. The show is done to advertise a particular thing or particular purpose; and in this particular show where Dr. Bina purchased the painting, it was to advertise the beginning of the Hypertension Center; and that was a part of what was supposed to be happening during that process.

There were other physicians with whom the same kind of thing was going on, Gut that Dr. Scullion was not one of them. That was not the only joint venture during that time. I know of my own personal knowledge that I had a conversation, many conversations, and involvement in coming to fruition a joint venture between Doug Talbot and Dr. Benjamin. Mr. Roy eluded to it because he was a part of it, and that joint venture was not so that the two of them could share a profit. It was so that they could get the buildup.

The building that he was moving to at 171 was a vacant building; and in order to get it built up Mr. Talbot didn't want to have the entire expense and neither did Dr. Benjamin. So, they joined to build up that building and make it totally viable as a

medical office, and they did that. Dr. Benjamin put in $40,000, he's told you. Um, and Mr. Talbot put in $24,000, plus he reduced the amount of rent on a ten-year period to equal it out so that when Dr. Benjamin left, Mr. Talbot would have a viable building; and Dr. Benjamin's benefit was having a building in which to practice,

There was no contract, no paperwork. It was the word of the two gentlemen, Dr. Benjamin and Mr. Talbot. The company was brought in. The building was built up, and Dr. Benjamin occupied that building until he was no longer financially able to manage and he had to let it go. He could not have a joint venture without Mr. Talbot's participation; but in this case, it worked because they had the same goal.

It was completed in the timely fashion. Dr. Benjamin did occupy the building; and they went for a couple of years, three years, whatever time they were; and it terminated because of Dr. Benjamin's enormous financial responsibilities and his inability to maintain it because at that point -- this terminated, I think, in January. It may have been March of this year, '96. Mr. Benjamin and myself were unwilling to continue to invest here and told our son that and the situation wasn't getting better, so he decided what is logical for anyone to decide. Too much had gone wrong. Time to be done with.

Then we had the present joint venture that was intended in Caribou, as you know, never came to fruition. I participated in that attempted joint venture, just as I participated in the one in the Presque Isle office. I participated in exactly the same way, in selecting colors and paintings and design and making the office flow, making sure it was handicapped accessible, that it had all the things patients required in the way of for the elderly, automatic faucets, the soap and the water -not the water, the soap where you had a soap dispenser. Put your hand there and it automatically comes in. All of those things I did in the Presque Isle office and in the Caribou office. In the Presque Isle office

with the help of my son Ben Benjamin, and in the Caribou office with the help of Phil Roy

Um, the entire time that I was aware of Dr. Bina being in Presque Isle and his association with Dr. Benjamin, I believed them to be friends; and on the basis of believing they were friends, I put all of that effort and energy into putting that building together; and I didn't charge my son or Dr. Bina any amount of money. I put it together completely, absolutely, in the time required, and the office opened around the 10th of January.

But from there on, the Caribou office never worked. Dr. Benjamin didn't want to get rid of the Caribou office because he had made application to the Cary Medical Center and he wanted to maintain that application and he was awaiting TAMC sending over his charts so that that could be approved.

The Presque Isle office, on the other hand, he had a ten-year lease on and a promise to keep it, so he had to keep that. So, in the process, I tried to negotiate with Dr. Bina, if you're not going to join in Caribou, take the Presque Isle office lease over. that will reduce the cost of Dr. Benjamin, and we can go our separate ways. There doesn't have to be one person hurt.

Um, I did contact Mr. Talbot and ask him if it was agreeable to him, and he agreed; and when I contacted Dr., Bina, he said no, not negative, not necessarily because he didn't want it, but because I there was a problem with where he was renting. This person was his proctor and he could not leave. He gave me a very vulgar term, which I don't want to repeat; but it was certain that he could not leave there, even though he was upstairs, two flights of steps, and his terminology, his words, in a small, dinky office, and it cost him $900 a month and he could have been over in an office that was totally handicapped accessible.

What was happening to him politically was so strong that he could not leave there and take that office, not as long as it was

associated with Dr. Benjamin. He -- during December of 1993, I had a conversation with Dr. Bina concerning the political atmosphere in TAMC and what was happening to him, what was happening to Dr. Benjamin. This took place because we had both been invited to a dinner party at the same place and he had not shown up and it was mentioned during the dinner that he had not shown up and I said, well, he's probably very busy because he mostly called me on Sunday nights and I think all the rest of the week that he was busy, busy, busy. I think that was the limit of my discussion.

However, the following day, he called me. Dr. Bina called me and told me, did you discuss me at that party last night? And I said, yes. He said, I want to know to whom you said it and what did you say. And I told him as best I could remember what I've told you. And he said, I was called in to Mr. Peterson's office today and threatened for having had any association with Dr. Benjamin.

Then I had -- I made several other arrangements with that same family that we went to see, the Nichols. So, I called her back and told her I would not proceed with those other activities because of what he told me and I believed him based on the things that he had told me prior to that, that he was in fact threatened.

I know from my own ears, having heard it, that Dr. Benjamin had been told that they intended to isolate him. So when Dr. Bina told me that he was getting flak from being friends with Dr. Benjamin, I had no reason not to believe him and I proceeded on that basis not to ever mention his name again, because the person to whom I mentioned his name, Dr. and. Nichols, I mean why would that create a problem? So, I didn't mention it to anyone based on what he told me,

During that fall, starting the beginning of October, Dr. Bina started calling me and telling me different things that the hospital members of the hospital staff were doing against Dr.,

Benjamin; and he went into considerable detail and dates and times and rules that were being changed, etc.

Based on him telling me that, when another lawsuit was filed, I mentioned that I had been told by several people, not just Dr. Bina, but 21 other people, of what was going on there. So, the other -the other attorneys wanted to know who they were and they asked that I be told by the Court to give those names. I was told by the Court to give those names. So, I gave all 21 names, and some of those people have spoken to me about it, but not one of them has had the reaction that Dr. Bina has.

The first person who came to me about it was Dr. Scullion and Dr. Scullion was having his own problems and his exact words to me is, you think I'm having problems, your son is in bigger S-H-I-T than I am. I said, what? And he began to elaborate and told me all the things that were going on at The Aroostook Medical Center.

Now, when it was followed up by Dr. Bina telling me things, I had no reason to not believe that those things were happening. I believed him. We were seeing different consequences in the office and in the community and things, so there was no reason for me not to believe that what he said was accurate; and many of the things that he told me have turned out to be accurate. But based on what he told me and if he were in any kind of jeopardy, it was my belief that it could be easily solved because Dr. Bina Dr. Benjamin was going to go to Caribou anyway. You just take the Presque Isle office. Dr. Benjamin is leaving and we'll go to Caribou. You take Presque Isle, and there is no connection, no loss to either of you. He said, no, and there was no resolving the situation, none. So, we let it be.

Now, that happened, but they remained what I believed to be friends until Spring of '95, probably around April. Dr. Benjamin started to complain to his lawyer, who is my brother,

that Dr. Bina was doing and saying things. My brother called me about it.

MR. CURRIER: I'm going to object, your Honor. Obviously, this is hearsay. I've let some go in, but seems to me we're --

THE COURT: You can't testify what your brother said. You can testify what you did as a result of what he said.

BY MRS. BENJAMIN: Okay. Let me see if I know independent -- no. Anyway, um, Dr. Benjamin came to I me and told me that he believed there was something going on and he and I ought to investigate it to see what it was. Um, I could not. I have a fifteen -she's now sixteen. I believe when this happened to her she was fourteen. Um, she had just entered high school and a tragedy occurred concerning her and she was not able to remain in --

MR. CURRIER: I have to object to this, your Honor. It doesn't seem relevant to the issues at hand.

THE COURT: Just move on. We'll move on.

BY MRS. BENJAMIN: I had to move out of the area to protect her, so I could not be here while Dr. Benjamin and Dr. Bina did anything about whatever they were doing, but I came back from time to time but I could not remain here.

I was back here, I think, in May of '95; and Mr. Ellis, the sheriff, walks into my son s office and looked for me. I was not there. I know Mr. Ellis, so I tried to call him to see what was up, you know, why he needed me, because suits have been filed against me from time to time for different things and they get resolved, but they have nothing to do with this thing. It's just that I knew who he was, so I tried to find out what he wanted. So when he I came back, my son was there and he accepted service

of this complaint from Dr. Bina on my behalf. That was the first time that I knew I was being charged with having borrowed money that I would not repay.

Prior to that, he had not ever asked me to pay him any money. He hadn't offered to loan me any. I did not borrow any from him. It was strictly a joint venture to mutually maximize the abilities of both physicians to function. It didn't go beyond the same thing that happened when the Presque Isle office was built up. There was no more expected from anybody, and my participation in it was simply to facilitate and help it to happen, because it was happening between my son and a person I believed to be his friend, and I wanted to support them both, not just my son. I wanted to participate in it, see it happen. Of course, it didn't.

I believe that's the extent of my involvement in it.

THE COURT: Okay. Um, you can remain there and I'll have the witnesses question you -- not the witnesses but the --

MR. CURRIER: I don't have any questions.

THE COURT: You don't have any questions? Dr. Benjamin, do you have any questions?

DR. BENJAMIN: No, I don't have any questions.

THE COURT: Okay. You may return. Dr. Benjamin, do you wish to testify?

DR. BENJAMIN: No, your Honor. I've already testified to I think all --

THE COURT: Are there any further witnesses that you wish to present?

DR. BENJAMIN: Just Dr. Bina.

MR. CURRIER: Your Honor, it's my understanding we're going to limit testimony to matters that have not been already in evidence,

THE COURT: These are new matters. They will not be duplications.

MR. CURRIER: Thank you.

DR. FARID BINA, having been previously sworn, was examined and testified as follows:

BY MRS. BENJAMIN:

DIRECT EXAMINATION

Q. Dr. Bina.

A. Good afternoon, Mrs. Benjamin.

Q. When did you learn that I was a dependent of my son?

A. Dr. Benjamin mentioned it one time that he has been taking caring of his family and his brothers and sisters and parents.

Q. Dr. Bina, could we just confine it to me?

A. Sure.

Q. Okay. When did you learn --

A. To be exact, I learned it during the lawsuit that you were one of them; but prior to that, Dr.

Benjamin had mentioned his family were his dependents.

Q. Before the lawsuit, you did not know that I was his dependent?

A. I knew the family are his dependents.

Q. All of the questions I'm going to ask you will be relating to me.

THE COURT: Okay. You can pursue -- I mean, if you're not satisfied with his answer, you can keep asking the same question. At some point, if I think you're getting repetitive, I'll intervene and I may also talk to the witness, So, go ahead,

MRS. BENJAMIN: Okay.

BY MRS. BENJAMIN:

Q. It was during this lawsuit that you found out that I, Rebekah Benjamin, was a dependent of Dr. Benjamin's?

A. I became sure of the fact, yes.

Q. Sure of -- sure of --

A. The fact that he mentioned it, that's correct.

Q. Before the lawsuit, you did not know for sure?

A. I was aware of it, but I wasn't definite.

Q. Before the lawsuit, did you know for sure?

A. I was not sure for sure, no.

Q. Um, you have stated -- I want to give you some pages from a deposition of yours for -- actually, I want to give you the entire -- I can give you the entire deposition.

THE COURT: You can just refer to the page if you want.

MRS. BENJAMIN: And refer to the page number. I have it in a binder.

THE COURT: That's so you'll be aware -- I've indicated this to Mr. Currier. The way that a deposition is used, you can first ask him a question.

MRS. BENJAMIN: Mm-hm.

THE COURT: And if his answer differs from the deposition, you can refer him to the deposition for what he said. If it's the same, you don't have to use the --

MRS. BENJAMIN: No, okay.

BY MRS. BENJAMIN:

Q. On page 68, line 11, do you see it?

A. Yes, ma'am.

Q. Did you lend me any money?

THE COURT: Okay. You'll have to ask him. Just ask him directly right now; and if his answer is

different from the deposition, you can refer to it. Ask him directly.

MRS. BENJAMIN: Oh, I thought I was doing that, I asked him did he lend me any money.

THE COURT: Okay. Fine.

A. Yes, I lend you money with Mrs. -- with Dr.

THE COURT: You don't have -- don't read the deposition. You just answer her question.

THE WITNESS: Sure.

THE COURT: Okay. And if she wants to refer to the deposition after you've answered, she'll do that.

THE WITNESS: Okay.

THE COURT: Just -- do you both understand what I'm saying?

MRS. BENJAMIN: I do.

THE COURT: The deposition is previous testimony and it's under oath and the reason depositions are taken is to find out what people will say in advance and to get that under oath. And when they testify at trials, sometimes their testimony is different because they just don't remember it the same or sometimes their testimony is different because - their testimony is different and then the party who took the deposition has the opportunity to go back and remind the person of what they said at that time. Then, you know, if they want to pursue it further as to why the difference, they

are entitled to do that. So, don't read the deposition unless you're asked to.

THE WITNESS: Okay.

THE COURT: And you can go ahead and proceed directly with the question.

BY MRS. BENJAMIN:

Q. Would you read line 11 and 12?

THE COURT: No. First you're going to have to ask him a direct question, If you want to know whether he ever loaned you any money, just ask him directly.

MRS. BENJAMIN: I asked him and --

THE COURT: He started to read the deposition, and I told him not to. Okay?

BY MRS. BENJAMIN:

Q. Did you ever lend me, Rebekah Benjamin, any money?

A. No.

Q. Did you ever give me, Rebekah Benjamin, any funds for personal use?

A. No.

Q. Any?

A. Except I paid you the $1,200 for the --

Q. Mr. Bina, please.

A. -- for the painting.

MRS. BENJAMIN: You're going to get me in trouble.

THE COURT: No, he won't get you in trouble. Just ask the questions. Don't worry about that.

BY MRS. BENJAMIN:

A. Yes, for your personal use, the $1,200 for the painting that I bought was used by you; and I don't know how you dispensed it, but that's correct, the painting.

Q. That's not responsive to the question I asked you.

A. Please repeat your question.

Q. That wasn't a loan, was it?

A. Please repeat your question.

Q. Was that $1,200 a loan?

A. That was the payment for a painting that I bought from you.

Q. Right. Exactly. But it had nothing to do with you lending me money for my personal use.

A. For your personal use, no, I did not lend you money --

Q. When you stated on previous occasions that you loaned Rebekah Benjamin money, was it in the sense that you referred to now --

MR. CURRIER: Excuse me, Mrs. Benjamin. Haven't we covered this on both direct and cross?

THE COURT: No. I'm going to let her ask the question.

BY MRS. BENJAMIN:

Q. When you have stated in the past that you have loaned me money, what moneys were you referring to that you had loaned me, Rebekah Benjamin?

A. The statement is incorrect. I did not state that I lend you personally money.

Q. You never stated that you lent me personally money? You never did?

A. Not personally. As an agent of Dr. Benjamin, yes.

Q. That's another question I will ask you. When you gave me the check on Sunday, October 10th, was that money a loan to me, a loan to Dr. Benjamin, or part of some other activity between the two of us or between you and Dr. Benjamin?

A. I never met you on Sunday, October 10th, and I never gave you the money, and I never saw you that date. I gave the check personally to Dr. Benjamin on October 11th when he came to my office and I wrote the check and it was cashed October 12th, the next day.

Q. Did you remove the check from the checkbook?

A. I never did my booking and usually I wasn't messing around with how Carol did her booking and I removed it --

Q. Just answer.

A. And I removed it because I didn't know --

THE COURT: Just answer the question yes or no,

BY MRS. BENJAMIN:

Q. Did you remove the check from the checkbook?

A. Yes, ma'am, I did.

Q. You removed the check from the checkbook but kept it in your office?

A. That's correct, ma'am.

Q. And you wrote in the date book in your own handwriting -- may I have the --

THE COURT: Okay. This is repetitive. He's already testified to this.

MRS. BENJAMIN: Pardon?

THE COURT:He's already testified to this. He's already said that he did this.

MRS. BENJAMIN: Oh, okay. I'm going to get finished as quick as I can.

BY MRS. BENJAMIN:

Q. Um, the deposition in your hand, on page 9-- I want to get that exhibit on October -- page 92, um, on line 20, do you see line 20?

A. Yes, ma'am.

Q. Um, did you ever give Dr. Benjamin funds for his own personal use?

A. Yes, ma'am,

Q. And those were?

A. To pay his staff, to pay his salary when he had was short and he had a rough time.

Q. To pay whose salary?

A. I don't know. He came to me and he told me he's behind. He cannot meet his obligations.

Q. Dr. Bina, Dr. Bina, I want to know the names specifically of the person --

A. He didn't mention names, ma'am.

Q. But you gave it to him for his own personal use?

A. That's correct.

Q. It was not a business use?

A. No, it was for his business use, to run his business.

Q. But you gave it to him directly from you for that purpose?

A. That's correct.

Q. You do not recognize any joint venture?

A. No, I do not recognize any joint venture.

Q. Okay. Do you know of your own knowledge that I was in Dr., Benjamin's office as an employee, or however you term it, working as office manager during the months of September '93 through April of '94?

A. Yes, ma'am.

Q. And you know that of your own personal knowledge? You came into the office and you saw me there working?

A. I came there only once, but Dr. Benjamin mentioned it that my mom runs the daily office and my mom--

Q. Dr. Bina, that's not the question. The question is did you ever see me there running the office during September '93 through April '94?

A. Visually, I only saw you once there. That 's it.

Q. And when was that?

A. That was in September of the '93 when I bought the painting.

Q. And that was the first time you and I met?

A. That's the first time that I was in the office and the last time that I was in the office,

Q. Was that the first time that you and I met?

A. No, we met -- I think I had met you other times. but I don't recall.

Q. Before September?

A. Yes. I came in June of the '93.

Q. But before September, did you meet me?

A. I don't recall, Mrs. Benjamin. I was new in town and I met a lot of people.

Q. Dr. Bina, please. I only want to know if you met--

A. I don't recall.

Q. And you only saw me in the office on one occasion?

A. That's correct, ma'am, besides the time that I passed through -- my office was close to you. I

could see their office out the window and I could see--

Q. Dr. Bina, we don't have a description of the office.

A. Okay.

Q. But I can tell you it's not possible for you to see me from his office.

A. My office is twenty yards --

Q. Three buildings away.

A. That's right, twenty yards from your office.

Q. About 150 yards away.

A. If you walk down--

THE COURT: How do you think the court reporter is taking this down? How do you think she's taking this down?

MRS. BENJAMIN: She can't, she can't possibly.

THE COURT: Okay. You'll have to let him finish before you ask the next question, and just answer her question directly. Don't give long explanations.

BY MRS. BENJAMIN:

Q. Now, you spoke to me in February of '95 in, um, Presque Isle or Caribou or somewhere in this area?

A. I don't know where you were.

Q. No. I meant where you were.

A. I was in Presque Isle, ma'am.

Q. Yes. And you spoke to me?

A. Yes, ma'am.

Q. Do you recall what that conversation was about?

A. Yes, ma'am, some part of it.

Q. Um, oh, you don't have the entire conversation?

A. I don't memorize the way you do.

Q. No. Just do you or you do not? You don't remember it?

A. I remember we discussed you paying me back my loan that I granted to you and your son as mutual--

Q. A loan?

A. To Dr. Benjamin.

Q. Dr. Bina --

A. To Dr. Benjamin.

Q. Dr. Bina, the conversation that I'm referring to was in February?

A. We had--

Q. Not all the others, the one conversation we had in February.

A. We had a lot of conversations, Mrs. Benjamin. I can't recall all of them in detail.

THE COURT: Go ahead.

MRS. BENJAMIN: Go ahead? Okay.

BY MRS. BENJAMIN:

Q. Now, um, at any time during the months in question, September, October, November, December, January, February, March, did I ever ask you for money?

A. No.

Q. During that time, did you ever loan money specifically to Rebekah Benjamin?

A. I loaned money to Benjamin's.

Q. Please. Did you specifically loan money to Rebekah Benjamin?

A. Rebekah Benjamin's name comes on the check, on checks.

Q. Dr. Bina, direct question. Will you read line 11 on page 68 of your deposition, line 11 and 12?

A. You want me to read it to you?

Q. Yes, please.

A. Are you stating that you loaned Mrs. Benjamin moneys? Answer: I lend you with Mrs. Benjamin as your agent and your dependent.

Q. Now, you lent to Dr. Benjamin as my -- to me, Rebekah Benjamin, as his agent and dependent; is that the statement here?

A. I lend money --

Q. Please. Is that the statement that you just read?

A. Yes, ma'am.

Q. Does lending money to Mrs. Benjamin as your agent and your dependent constitute a loan to Rebekah Benjamin?

MR. CURRIER: Objection, your Honor.

THE COURT: Objection sustained.

MR. CURRIER: That's the ultimate question.

THE COURT: Right. That's a jury issue.

MRS. BENJAMIN: Oh, okay.

THE COURT: There are two counts. One is a loan. The other is unjust enrichment. So, these are jury issues. okay?

MRS. BENJAMIN: And I don't ask him that. Okay.

BY MRS. BENJAMIN:

Q. During the time in question, September-- we

know I don't have to repeat those dates. During the time in question, was there--during the time that I have just mentioned to you, was there a relationship between you, Dr. Bina, and me, Rebekah Benjamin, such that you would know what I spent money for, where I spent it, how I spent it?

A. No, ma'am.

Q. So you would have no independent knowledge of whether I took any funds, did anything with it, or anything. I never told you that and you never saw that.

A. I was just in town for two, three months at the time, no, ma'am.

Q. Please, just tell me --

A. Yes, ma'am.

Q. On line 69 -- on page 49, line 11, would you read that?

A. At no point in time have you-- at no point in time have you loaned Mrs. Benjamin money? (Nodding) Answer: (Nodding in the negative) So, you're saying -That's right, Because you're shaking your head no, no.

Q. That states -- you just read that. That's concerning me. That's the Rebekah Benjamin that you're referring to?

A. That's correct.

Q. Do you have a copy of your interrogatories?

MRS. BENJAMIN: I need that one back. Can you come and get that one back and give him this?

BY MRS. BENJAMIN:

Q. Um, did you tell Carol McKay to write, call, or otherwise contact either Dr. Benjamin or myself?

A. Yes, ma'am.

Q. And when did you?

A. When Dr. Benjamin would call for the money -

Q. No. I -- dates, please.

A. Well, that's what I'm -- let me get --

Q. Well, let me give you dates.

A. Let me answer you, please.

Q. No. I'd like to give you dates to confine it to so I can go where I want to go instead of getting off on a tangent. In October, the check for October 10th or 11th, however you want to accept that it got there, did you have Carol McKay make any notation, written, calling, or otherwise, to either me or Dr. Benjamin about that being a loan or time to repay it or anything?

A. No, ma'am.

Q. The check for November?

A. Yes, ma'am, she did make a notation that was a loan to Dr. Benjamin.

Q. And where did she make it?

A. She made it on her own ledger and started keeping track of -- starting from October --

Q. A ledger that we have not seen here.

THE COURT: Please don't interrupt him.

MRS. BENJAMIN: Oh, sorry.

BY MRS. BENJAMIN:

A. It was just a handwritten thing that she kept t rack of .

Q. Have we seen that ledger here?

A. It's not a ledger. It' just -

Q. We have not seen it.

A. No.

Q. It's not here for evidence for them to review or anything.

A. The checks are evidence, ma'am.

Q. Um, no, no, the ledger that you referred to, it's not here. How about January?

A. It was recorded down.

Q. No. Well, let me go back to my original question so -- I only want to just give you the dates. Did--

MR. CURRIER: Excuse me, Mrs. Benjamin. Your Honor, I hate to keep objecting; but it seems to me we have covered this ground at length both in his direct examination and his cross, redirect, and recross yesterday.

THE COURT: There is a stipulation -- it's agreed there is no written ledger?

MR. CURRIER: Carol McKay testified she kept some note of it in her desk. We don't have it, haven't produced it, and haven't offered it into evidence.

THE COURT: You agree to that?

MR. CURRIER: Yes.

MRS. BENJAMIN: Okay. That's excellent. We don't need to do that then. Your Honor, unfortunately, I don't know if I can ask about this. I want to ask about the itemized lists, as they call it. Is that something I can ask about or does--

THE COURT: Why don't you start; and then if I have to intervene, I will. As long as it hasn't been covered before.

BY MRS., BENJAMIN:

Q. An itemized list, as you know it, does it have an itemized list, does that list have to name something? In other words, if you're making an itemized list, you have peanut butter, sausages, rolls, jam--

THE COURT: Okay. You'll have to ask another question. That question is not clear, and I'm not sure whether you're asking for a legal opinion or what.

MRS. BENJAMIN: Neither. Am I, your Honor? So maybe I should leave it alone.

THE COURT: Okay. The question is not proper.

MRS. BENJAMIN: Right. I'11 leave it alone because I don't know whether it is legal or not.

BY MRS. BENJAMIN:

Q. Now, in the six months that you issued these checks, six checks over a six-month period, the entire amount for that period of time, it is your testimony that you intended it as a loan and not a joint venture?

MR. CURRIER: It's been asked and answered.

THE COURT: That's been well covered.

MRS. BENJAMIN: That's right. You told me not to restate.

THE COURT: Not to repeat things already in evidence, and he's already said there was a loan.

MRS. BENJAMIN: I know he says there is a loan and we say different, but I wanted to ask him when he says -- oh, I know -- yeah, I know how to do that.

THE COURT: Go ahead.

BY MRS. BENJAMIN:

Q. Have you requested any funds from anyone associated with that period of time other than Dr. Benjamin and myself?

MR. CURRIER: Objection.

THE COURT: I'm not sure I understand the question.

MRS. BENJAMIN: He said earlier that he had loaned the money to the Benjamin family.

THE COURT: Right.

MRS. BENJAMIN: And I want to know if he made any other requests.

THE COURT: I don't -- other requests?

MRS. BENJAMIN: Other than Dr. Benjamin and myself.

THE COURT: And whats--

MRS. BENJAMIN: We've -- I have eight children and a husband. We are all Benjamin's and we're all included in that one thing, the Benjamin's.

THE COURT: You want to know whether he asked

any other members of the family?

MRS. BENJAMIN: Yes, yes.

THE COURT: You can ask that question.

BY MRS. BENJAMIN:

A. No, ma'am, I did not.

Q. You never spoke to any of them about this?

A. No, ma am.

Q. All right. Are you aware who handles Dr. Benjamin's funds?

THE COURT: Do you know personally?

THE WITNESS: Personally? No, because -- based on testimony, yes.

THE COURT: Just personally.

BY MRS. BENJAMIN:

A. No, personally--

Q. You don't know?

A. I mean, I know --

THE COURT: That's all, if you do or you don't. Personally, you do not know who handles Dr. Benjamin's funds?

THE WITNESS: No.

BY MRS. BENJAMIN:

Q. When you heard testimony as to who handles his funds, was that the first time you heard anything concerning Dr. Benjamin's funds and handling of his money?

A. No, ma'am.

Q. Then if you had heard prior to that, did you hear that directly from me?

A. No, ma'am.

Q. At no time have you heard me, Rebekah Benjamin, tell you, Dr. Bina, that I handled Dr. Benjamin's funds?

A. Actually, you told me one time --

Q. The answer is yes?

A. Yes, ma'am, yeah.

Q. When?

A. One time, I don't recall the date, but Mrs. Benjamin called me up and was saying that she's trying to fix him up and let him practice medicine and she runs the daily office and she was going to buy him a house or Whom" and she was going to leave him alone and keep him out of all the lawsuit that was going against him so he could practice medicine

MRS. BENJAMIN: Your Honor, I want to know what

I told him about --

THE COURT: Just ask him directly a question. Ask him direct.

BY MRS. BENJAMIN:

Q. What did he tell you?

THE COURT: About what?

Q. About his money?

A. That you were managing his affairs and his No, no, about his money, what did I tell you? You were managing his affairs and

Q. No, no--

MR. CURRIER: Let him answer the question.

THE COURT: Answer the question.

MRS. BENJAMIN: Affairs are not what I am asking about.

WITNESS: Financial affairs.

MRS. BENJAMIN: Oh, okay.

BY MRS. BENJAMIN:

A. Financial affairs, and you wanted him to stay away from all these lawsuit that everybody was bringing against him and she was going to buy him a "house" I recall that because I was asking

for the money back and that's what the statement she came up, I'm going to buy him a house and so he could practice medicine; and I think there was a problem with eviction someplace and she brought that one up.

Q. When the problem with an eviction that you just referred to -- are you referring to the 412 Main Street where I lived?

A. I don't know about it, Mrs. Benjamin.

Q. Well, I didn't -- oh, you referred to there was a problem with eviction.

A. That's correct.

Q. Or something. And I -- there was a problem, but that problem occurred in, according to Mr. Currier's records, January of 1996 or '95.

A. There was a problem you had before and that's what you said.

THE COURT: Okay. Just a minute.

MRS. BENJAMIN: That's not what I meant.

THE COURT: Let's start over again. you ask the questions. Please, let's start again. When she asks you a question, do not volunteer more information than you're asked for.

THE WITNESS: Yes, your Honor.

BY MRS. BENJAMIN:

Q. Now, the conversation that you referred to where I discussed his finances with you, I had one conversation with you, according to your statement, where I discussed his finances, Dr. Benjamin's finances with you.

A. No, you did not go into detail, ma'am.

THE COURT: What's the question? Ask the question.

BY MRS. BENJAMIN:

Q. Was that the same conversation where I discussed the house I was going to buy him?

A. I don't recall, ma'am. you were constantly calling me many times for different reasons.

Q. Concerning Dr. Benjamin?

A. That's correct.

Q. And concerning his financial affairs?

A. No, ma am, you never got into financial affairs. I'm not nosy person to get into other people's business.

Q. When you -- you said I did have one conversation concerning his finances, but I don't recall when it was or --

A. No, I don't keep track of the time like you do.

Q. Then let me ask you about the time when you

referred to me buying a house for Dr. Benjamin. When exactly was that?

A. I don't recall exactly when that was, Mrs. Benjamin.

Q. You do remember that it occurred?

A. I remember that you told me that.

Q. It actually occurred?

A. That's right, because I told Tanya about it, what you told me.

Q. But you don't remember when?

A. Not exactly.

Q. It could have been -- it could have been in '92, '95, '93?

MR. CURRIER: Excuse me, Mrs. Benjamin. Your Honor, I'm going to object again as to relevance of this. We have covered this ground repeatedly, and I don't know how relevant it is for this jury when they discussed Mrs. Benjamin buying a house for Mr. Benjamin.

THE COURT: What's the reason for the question?

MRS. BENJAMIN: Um, when this suit was filed, it said real estate may possibly be involved; and immediately before the suit was filed, I had a conversation with Mr. Bina concerning real estate property in this area.

THE COURT: What's the relevance to this lawsuit?

MRS. BENJAMIN: I wanted him to pinpoint the time.

THE COURT: What's the relevance of his answer to this lawsuit.

MRS. BENJAMIN: He said -- he said that he had one financial conversation with me, and the only conversation he ever had with me was just prior to this lawsuit being filed,

THE COURT: Okay. Well, he said he doesn't know when it was; and if you want to take the stand again and clarify that, then you can do that.

MRS. BENJAMIN: No, that's fine. He doesn't know when it was.

THE COURT: That's what he said.

MRS. BENJAMIN: Okay.

BY MRS. BENJAMIN:

Q. All of the conversations prior to that date, the one that we 've just cluded to, every other conversation was concerning other things other than finances or joint venture?

A. We never discussed the joint venture.

MR. CURRIER: Excuse me. Your Honor, that is a wide open, broad question. It's not focused at all as to any issue in this case.

MRS. BENJAMIN: Well, I don't intend it to be.

MR. CURRIER: It's not direct.

THE COURT: You can rephrase your question and make it less --

MRS. BENJAMIN: Okay. Less broad?

THE COURT: Right.

BY MRS. BENJAMIN:

Q. During the six months that you issued these checks, just focus on those six months, did you and I have many conversations?

A. We had -- I had conversation with everybody.

Q. Did we have many conversations?

A. Some conversations, some.

Q. During that six-month period?

A. Some, that's correct.

Q. During that six-month period?

A. That's correct.

Q. During any of those conversations, did we discuss Dr. Benjamin's finances?

A. You mentioned that you appreciate me helping him, and I remember clearly --

Q. Dr. Bina.

A. Please let me finish.

Q. Just --yes, please, I have other questions. I don't want it to go off to a whole

A. I'm telling you what the conversation was.

THE COURT: Okay. There are two issues involved here. Number one, he may not answer exactly as you want him to answer and you're going to have to live with his answers. On the other hand, if he goes beyond the thrust of your answers (sic), your objection will be noted and I will tell the witness not to go off into a long explanation about things you're not asking him about, okay?

MRS. BENJAMIN: Oh, okay. Thanks,

THE COURT: Go ahead.

THE WITNESS: There were conversations--

MRS. BENJAMIN: I'm not still asking that question.

THE COURT: Just a minute. She's going to start over. Go ahead..

BY MRS. BENJAMIN:

Q. During the six months in question -- I don't need to mention the months, I hope. During the six months that the checks were issued, during those six months, I had conversations with you?

A. Yes, ma'am.

Q. Those conversations that I had with you during those six months, did those checks ever become a topic of discussion between you and I?

A. Yes, ma'am.

Q. During those six months?

A. Yes, ma'am,

Q. Was that that one time that you and I discussed finances?

A. No, ma'am. It was a general subject that we discussed.

Q. Did we discuss behavior of myself, yourself, and Dr. Benjamin?

A. No. You discussed comment about me.

Q. No. I want to know if we did that, please. We - did you discuss in that six months anything with me concerning my behavior, your behavior, or Dr. Benjamin's behavior?

A. Which one should I answer to?

THE COURT: All three.

A. Okay. No. Yes, ma'am. We discussed --

Q. Now, I want to know concerning me, Rebekah Benjamin.

A. Yes, ma'am. What would you like to know?

Q. Um, the -- was that the one time you had a conversation with me concerning Dr. Benjamin's finances?

A. I mean, I never got into asking him or asking you anything regarding financial. What I was getting mostly was from you telling me.

Q. Did you discuss with me during that six months anything concerning me, with me concerning Dr. Benjamin's -- maybe you're just not understanding the question I'm asking.

A. Oh, I understand, ma'am.

THE COURT: This is just -- this is just an example of communication.

MRS. BENJAMIN: Yes. I'll leave it.

THE COURT: Sometimes when you say things and you mean something, they may not hear the same thing and it may not mean the same thing. So, this is a frequent occurrence in the courtroom where people simply don't communicate and sometimes it takes effort to make the person understand what you mean and sometimes it takes effort for the person to understand what he's supposed to answer. So, this is a common problem and just work it through. You have the right to lead the witness. You don't have to ask him wide open questions. You can ask him leading questions and suggest the answer to your questions. You can say isn't it true we

never discussed finances more than once? He may say yes. He may say no.

MRS. BENJAMIN: Okay.

THE COURT: But you can ask those types of questions if you want to.

MRS. BENJAMIN: Okay. Thanks.

THE COURT: And then you're left with the answer, and you may want to pursue it. That's the process. But when you ask the wide open question, he may think you mean something else. He may give you a lot more information that you intend to get, okay?

MRS. BENJAMIN: I got it.

THE COURT: That takes practice sometimes, and I have to have this conversation sometimes with seasoned attorneys so--

MRS. BENJAMIN: Well, if I'm doing anything wrong, you know--

THE COURT: Go ahead.

MRS. BENJAMIN: First of all, we can blame Mr., Currier because I'm copying him and following your instructions.

THE COURT: Move on.

MRS. BENJAMIN: I want to get into another position so I can handle myself better.

BY MRS. BENJAMIN:

Q. Now, the one conversation that you have eluded to having had with me concerning money and Dr. Benjamin, did that one conversation take place during the six months that these checks cover?

A. There were conversations that occurred during that six months, that's correct.

THE COURT: Go ahead.

Q. The one single conversation that you eluded to earlier in your testimony that you had with me concerning Dr. Benjamin's finances, did that conversation take place during the six months of these checks? Let me -- let me add to that. I want to know if the conversation you referred to earlier as having one conversation with me concerning money and Dr. Benjamin, did that conversation that you referred to take place between October, November, December of '93 or January, February, March of '94?

THE COURT: Just say yes or no.

THE WITNESS: But there were many conversations.

THE COURT: I know. That's the point. I mean, you suggested he only talked to you once and he said I talked to you many times. He's not going to be able to answer your question the way you want. Do you want to know whether the conversation about the house occurred during the six months? Is that what you want to know?

MRS. BENJAMIN: Um, no, during his --

THE COURT: You'll have to go ahead and proceed and ask him the questions. Just go ahead. Start again. We'll keep moving.

BY MRS. BENJAMIN:

Q. Well, you don't remember the conversation -- what I'm asking reference to that you referred to earlier in this conversation, you don't recall a specific conversation. You told me that you had.

A. I mean, there were a lot of conversations we had. I mean, I don't remember all of them in detail. I remember some part of the conversation, what you were feeding me. That's all I remember, but I don't remember details or exact dates. I mean, you have to be more specific to me so I can respond to you.

Q. I thought if you went ahead and talked, I might be able to catch it and point it out to you; but you said there was a conversation that I had with you concerning buying him a house and things like that.

A. This happened after the first six months. It was - I started calling.

Q. That's what I needed to know.

A. Yes, that's correct. This happened sometime after when I started asking for the money back; and one time she brought that one up, yes, I'm

going to buy him a house and settle him down and do this for him.

Q. And that was in sometime after that six months of --

A. That was -- I'm definite it was after the April '94, around that time, after that April, in that time, because that's when I started asking for the money back.

Q. Was that in '94 or '95?

A. I don't recall to be specific, but I remember specifically about the house that you were going to buy.

Q. Oh, what house was that?

A. I don't know. That's what you were telling me.

THE COURT: You'll have to move on. We don't want to hear about a house anymore. We'll have to move on.

BY MRS., BENJAMIN:

Q. But I did speak to you in that month, according to your memory. I spoke to you in that -- in some-- sometime, some month, some year after April of '94?

A. Oh, constantly we'd talk, Mrs. Benjamin.

Q. About the house

A. No. I called you up and --

Q. No, no. About the house?

A. I remember only once, Mrs., Benjamin, about the house, one conversation.

Q. Okay. Now --

A. I ask you for the money back and you were going to buy him a house and this and I sat there and I talked to a friend of mine, said she wants to buy a house but she can't pay me back. That's it. That answer, that finishes that conversation for the house.

Q. And that was it?

A. That's it.

Q. That's the whole thing?

A. I don't remember the date. I don't remember the time.

THE COURT: Excuse me. Excuse me. Next question, please.

BY MRS. BENJAMIN:

Q. Are you aware of a piece of property I was looking at in May of '95?

MR. CURRIER: Objection, your Honor.

THE COURT: Objection sustained. You'll have to move on

MRS. BENJAMIN: Okay.

Q. At a property in the Presque Isle area --

MR. CURRIER: Same objection.

THE COURT: I don't know when the time frame is. Go ahead.

BY MRS. BENJAMIN:

Q. A property in the Presque Isle area during the period of time, six months, that you wrote these checks, was there a property in the Presque Isle area to be purchased by me for Dr. Benjamin?

A. I don't know, ma'am. I don't recall.

Q. But that is the only thing that you recall that I spoke to you about?

THE COURT: He's answered that question.

MRS. BENJAMIN: Pardon?

THE COURT: He's answered that question, okay? You'll have to move on.

BY MRS. BENJAMIN:

Q. In the months, those six months, that's the only thing. Okay. Then after the six-months period that these checks were written, let's see, the rest of the year, from April to rest of '94, did you and I discuss these checks?

A. Yes, ma'am.

Q. Did, in the year of '95, did you and I discuss these checks?

A. As we covered prior to this, yes, ma am, we did.

Q. In the year '95?

A. That's correct, ma'am.

Q. Up to the time that you filed this lawsuit?

A. The last time I spoke to you was middle of April of '95.

Q. Middle of April?

A. That's correct.

Q. Did you speak to me in February?

A. Yes, ma am.

Q. And we discussed these checks in February?

A. Yes, ma'am. You promised me that I'm going to get on it and I will make sure you get repaid. Multiple promises that you had made.

Q. That was in February?

A. In February, in Winter of '94, in Fall of '94, in Summer of '94, in April of '94, yes, ma'am.

Q. In February of '95, you spoke to me?

A. Yes, ma'am.

Q. And during that conversation, did I again approach you about taking over the Presque Isle office?

A. I already had an office in Presque Isle, ma am.

THE COURT: Just yes or no.

A. Um, to be honest, I recall something but I don't recall exactly what she was trying to give to me. I'm not sure of that. There was no issue of Presque Isle -- I already had office in Presque Isle.

THE COURT: Next question.

A. If you offered me, I declined it. I already had office in Presque Isle.

THE COURT: There is no question before you.

THE WITNESS: Oh, okay.

THE COURT: Go ahead. Next question.

BY MRS. BENJAMIN:

Q. The office in Presque Isle that Dr. Benjamin operated out of was a new office that was handicapped accessible -- this is to your knowledge I'm asking you -- handicapped accessible, reception room, two business offices, four exam rooms, kitchen, storage, and a bathroom; is that correct?

A. I am not aware of how many rooms you got. I know it's handicapped accessible. There is a handicapped sign, that's correct.

Q. Are you aware it was

A. Pardon me?

Q. Are you aware that it was a new buildup and built up in '93?

A. It looked new to me. I mean--

Q. Would you describe your office?

A. My office was located where Dr. Hamlin had his urology practice for 25 years. It was established It was owned by Dr. Hamlin. Its not a office,

handicapped accessible. I see my handicapped patients at a patient's center at the hospital which already had been processed for many years. That's how Dr. Hamlin took care of it. He had a clinic. Um, he -- it has front waiting area. It has front office. It has two bathroom on the front, accessible to the patients, one in the back. It has two full surgical examining room, one endoscopy room, one ultrasound urodynamics room, has a storage area, has semi-like kitchen, has a nurse s room, and then my own library which I have in the back with my own office.

Q. And the reception -- aside from the reception room being combined reception room at that time, the rooms are sized medium to large and quite nice?

A. It was a urology office since 1970, so it was used as a urology office; and I've been using it since I came here.

Q. Since 1970?

A. Since 1970's when it was built.

Q. But, otherwise, it's a quite nice office?

A. Oh, yes, well-kept, big office, yeah; but it's not handicapped accessible. They didn't have that law passed in '70's.

Q. And just as the handicapped accessibility to that office is outdated --

A. There is no handicapped access.

Q. Right. But there was no rule at that time, was there?

A. There was no rule and that office there' s some grandfather in and the hospital made arrangements for seeing patients as a handicapped for me or any other specialty in there outpatient area or emergency room area or clinic area and Dr. Hamlin did that and I continued doing the same.

Q. A little cumbersome, but you all manage?

A. It's not cumbersome. I work -- I'm a hospital oriented physician, I mean, half of my time is in the hospital in surgery.

Q. In the hospital anyway, so it was okay?

A. So, middle of the surgery, I came and saw patient and went back into the operating room.

Q. But that office and its accessibility all was developed in 1970.

A. Well, that's the --

THE COURT: That's not a question. Go ahead.

BY MRS. BENJAMIN:

Q. The office, at Dr. Benjamin's office that I asked you to take if you would from in the Presque Isle office, um, is a current up-to-date office. The rooms in that office are sufficient for an internist if there is only one practitioner.

A. What's your question.

Q. It's an up-to-date office.

A. If you say so, yeah.

Q. And the rooms -- no, I'm asking you. And the rooms in there are sufficient for an internist, if it's one internist --

MR. CURRIER: Objection. What possible ability would he have to answer that question?

THE COURT: Okay. What's the relevance of the Presque Isle office to this lawsuit?

MRS. BENJAMIN: The two of them could not be there, so I offered him to take that one and Dr. Benjamin take the other one.

MR. CURRIER: She's testifying.

MRS. BENJAMIN: Oh.

MR. CURRIER: She's not asking questions. She's testifying. Respectfully, I'm objecting to this line of questioning. I understand--

DR. BENJAMIN: The only reason I interject is because you asked her--

THE COURT: Can you let him finish talking? Just a minute, all of you.

DR. BENJAMIN: I'm sorry.

THE COURT: Listen, I don't want anybody interrupting anymore. Okay, Dr. Benjamin?

DR. BENJAMIN: Yes.

THE COURT: Mrs. Benjamin, do you understand that?

MRS. BENJAMIN: Yes, I got it.

THE COURT: Mr. Currier, what were you saying?

MR. CURRIER: Thank you, your Honor. I understood we were going to cover new ground,

THE COURT: Right.

MR. CURRIER: What's happening here is that we have the questioner testifying and asking him just to

confirm information she's already testified to, and so I'm objecting.

THE COURT: Okay. Mr. Benjamin, what is your objection?

DR. BENJAMIN: I was just saying that you had asked her a question and she was just answering your question. She wasn't like --

THE COURT: I beg your pardon?

DR. BENJAMIN: You had asked her a question and she was just simply answering your question, and then Mr. Currier got up and said she was testifying.

THE COURT: Okay. I would like to know what the relevance -- just explain. I'm not saying it isn't relevant. I want to know what the relevance of the conversation regarding the Presque Isle office has to do with this lawsuit. I understood this is a joint venture for the Caribou office.

MRS. BENJAMIN: Yes.

THE COURT: And you're talking about a 1995 conversation now?

MRS. BENJAMIN: Oh, I hope I wasn't.

THE COURT: What were you talking about?

MRS. BENJAMIN: I'm talking about 1994.

THE COURT: Okay. What time period?

MRS. BENJAMIN: Um, when this venture was aborted.

THE COURT: Okay. At that time since it was aborted, what's the relevance of that to this lawsuit?

MRS. BENJAMIN: At the time that that -- I don't want to testify, but it has to do with what the moneys--our discussion at that time had a clear view of what the moneys were for and how you could access the situation so nobody was hurt in the process.

THE COURT: Okay. Why don't you go -- if you want to go into that -- you've covered that, I believe, to some degree.

MRS. BENJAMIN: Okay. Well --

THE COURT: No, I don't want to limit your opportunity. If you want to ask the doctor about this specifically, it's information that has not been covered by this doctor, you're entitled to do that; but I want -- I don't want any repetition though. Why don't you go directly to what it is you want to ask him. Go ahead and proceed with your questions.

MRS. BENJAMIN: I'm scared to talk.

THE COURT: Go ahead. Go ahead..

BY MRS. BENJAMIN:

Q. You and I, we had a conversation in the end of March or first of April of 1994 about your taking over the --

THE COURT: What year, ma'am?

MRS. BENJAMIN: 1994.

THE COURT: Okay. Go ahead,

MRS. BENJAMIN: That was immediately after -

THE COURT: Go ahead.

THE WITNESS: She is --

THE COURT: Go ahead with your question. You may proceed.

BY MRS. BENJAMIN:

Q. -- about you, Dr. Bina, taking over the office at 171 Academy Street.

A. Absolutely not, ma am.

Q. You never had that conversation is what you're saying?

A. No, ma'am.

Q. Okay. Then there is no discussion to be had about that except for you to tell me -- I'd like to show you your affidavit. Oh, let's see, January 5, 1996, and question number 8.

THE WITNESS; I have a question. Initially, she asked me February of '95 in the same process twenty minutes ago. All of a sudden, she went to '94.

THE COURT: Just move on.

THE WITNESS: She just changed. I want to clarify what she said because her question was initially February '95.

THE COURT: Go ahead, ma'am. You may proceed with your next question.

BY MRS. BENJAMIN:

Q. Did you read number 8?

A. Oh, I read number 8 and number 9, sure.

Q. No, number 8 is the one I have a question

A. In February of '95, I called Dr. Benjamin's office in Presque Isle to inquire --

Q. Dr. Bina, please.

A. as to when I expect repayment--

THE COURT: I don't think you have a question. What do you want him to do?

MRS. BENJAMIN: I want number 8

THE COURT: Just a second. Don't read it. She didn't ask you to read it. Go ahead.

BY MRS. BENJAMIN:

Q. On number 8, can you read number 8, please?

A. At one point in time, Rebekah Benjamin asked me to take over Dr. Benjamin's office space/property in Presque Isle. I declined.

THE COURT: When did that occur?

THE WITNESS: Number 9, February of '95, I called Dr. Benjamin's office in Presque Isle to inquire as to when I am to expect repayment to this loan. And I think this is --

MRS. BENJAMIN: Your Honor, he didn't answer my question concerning number 8 and he's going on reading the affidavit.

MR. CURRIER: Her question was when did this occur and he started to read the next one which gives a date when this occurred.

MRS. BENJAMIN: When what occurred?

THE COURT: What's your question, ma'am?

MRS. BENJAMIN: Um, hand it back.

THE WITNESS: I need it.

MRS. BENJAMIN: I'll hand it back to you.

THE WITNESS: Sure.

MRS. BENJAMIN: And we cannot give it to her.

BY MRS. BENJAMIN:

Q. Now, at one point in time, Rebekah Benjamin asked me to take over --

THE COURT: What's your question, ma'am?

Q. That's what you just read.

THE COURT: What's your question?

MRS. BENJAMIN: Um, when, without him reading anything from here --

THE COURT: Ask the question please.

BY MRS. BENJAMIN:

Q. When do you recall that occurred?

A. I don't recall exactly, but I recall I think something February of '95, if that's what -- that I called and asked for the money and you said, well, take this office because we're -- I don't remember. I wasn't paying attention that much to you because by then I had figured you guys out. So, I don't recall exactly,

Q. That was in February '95?

A. Maybe it was, yeah, something in that regard.

Q. Now, this is my question.

A. Yeah.

Q. Such a conversation, you do not recall that having taken place in February of '94?

A. No, ma'am.

Q. Oh, okay. That's what I wanted to know. Now, on number 11, I want you to read -- I hate having to pass that back up, but there is no way to get it except --

A. What's your question?

Q. On Number 11.

A. Okay.

Q. The statement made there that you continued to contact us trying to make arrangements to get the funds returned to you, that's -- is that -- read that statement, please.

THE COURT: Read the statement.

A. I repeatedly attempted to work something out with Dr. Benjamins concerning this loan. I loan them this money in good faith as a professional colleague and acquaintance. I had no reason to suspect that they would not pay me back, and only wished to help them through a tough time.

Q. Okay. Now, can you pass it back to me, please?

THE WITNESS: Can we have a copy that she could share it or hand me a copy, please?

THE COURT: Do you have an extra copy?

THE WITNESS: Because we don't want to take too much time of the Court.

MRS. BENJAMIN: That's the only question I'm going to ask you about this particular document.

BY MRS. BENJAMIN:

Q. What arrangements did you attempt to make? What were the arrangements you attempted to make?

A. The arrangements, I was asking you to pay me back my money in whatever sense or means or through payments or whatever in a different portion of the whole chunk. That was what I was asking, that's right.

Q. You were repeatedly asking that it be paid to you in increments?

A. No. I asked for the money back, and I started asking for the money back in April of '94. This is when I started having--I had to pay--

Q. In April of '94?

A. April of '94, end of March of '94 and part of the April. This is prior to the tax date.

Q. Okay. Now, is that -- that's the first time we discussed the moneys?

A. That's -- that I asked for repayment.

Q. April of '94?

A. End of March, end of March. By then, I had finished my taxes. Peter Davis had finished the taxes prior to March, that March, middle of the March, so I already knew what I had to do with the taxes.

THE COURT: Next question, please.

Q. The end of April of '94 is when that first conversation took place?

A. No, ma'am, end of March, early -- before April 15th.

Q. Of '94?

A. That's correct.

Q. And we had a conversation?

A. We had multiple conversations.

Q. Did we have a conversation, the one you just referred to, end of March, beginning of April, concerning these moneys, you and I?

A. Yes, ma'am.

Q. Okay. And again in February of '95, you have testified to, and then you repeatedly asked to make arrangements. Now, when you say repeatedly asked to make arrangements --

A. Yes.

Q. -- those --

A. Yes. On your good faith to make arrangements to start paying me back because I didn't see any initiation.

Q. Those were arrangements that you wanted.

A. That's right. I wanted initiation from your side.

Q. That's right. And you didn't -- there were no other offers or other arrangements?

A. No, ma'am, there was no offer. I already I had my office. I was in full practice seeing 400 patients a week -- a month,

THE COURT: That's been answered.

A. And I never had intention of moving.

Q. Now, did you find the date on the income tax?

A. What's your question?

Q. Did you find the date out on the income tax that was filed?

A. It was filed prior to April of each year.

Q. You did not find the date?

A. I said it was filed on the deadline.

THE COURT: Do you know the date?

THE WITNESS: Honestly, I don't know the date.

THE COURT: That's all she's asking.

THE WITNESS: Oh, okay. But it was filed on time to be exact.

MRS. BENJAMIN: Mm-hm. But the date is not-- could I have those please?

MR. CURRIER: For the record, your Honor, we attempted to reach Mr. Davis during the lunch break, and all we get is his machine. We left a message. We left a message with the clerk to notify us. We stipulated and agreed these are true and correct copies of Dr. Bina's tax returns for the record. They can be admitted with our agreement.

THE COURT: Okay. You may proceed.

BY MRS., BENJAMIN:

Q. Now, these tax returns of '93 and '94 were filed sometime after April 1st and before April 15th, is that -- are we agreeing on that?

A. No, ma'am. It was filed prior to April 15th.

Q. Sometime between January and April, February and April, March and April, or in the month of April?

A. Prior to April 15th, they were filed.

Q. That's the only information you have for that four month --

A. That's the deadline the government gives me, and I try to oblige them.

Q. How does it happen that I have an unsigned copy?

A. This is a copy provided by my accountant. I sign the original when I mail it out.

Q. Oh, and you don't take a copy of the original that you sign?

A. No. He keeps -- I don't keep track of these things. My accountants do, I don't pay attention to those. They give it to me. I sign them and I mail them.

Q. So we can accept that these were actually filed even though this copy we have has no signature?

A. Yes, ma'am.

MRS. BENJAMIN: Could I see the income tax that was done by Mr. Felch?

MR. CURRIER: Could I ask what you're showing the witness?

MRS. BENJAMIN: The income tax for Dr. Benjamin.

MR. CURRIER: This witness doesn't have any knowledge of the income tax of Dr. Benjamin.

MRS. BENJAMIN: He can tell me what he sees there.

THE COURT: Beg your pardon?

MRS. BENJAMIN: He can tell me what he sees there.

THE COURT: What?

MRS. BENJAMIN: The witness can read me what he sees.

THE COURT: He's not a proper witness to work from that document.

BY MRS. BENJAMIN:

Q. When a certified public accountant does your taxes and he mails to you your copy of those taxes, it is your experience that your accountant does not type in his name, the date, his number and your number, and a telephone number to reach you?

A. I don't prepare them. They prepare it for me and sign them.

Q. But when he does it, he does not type in the date and time and etc. on your taxes, your accountant?

A. I'm not an accountant. I have no knowledge of accounting.

MRS. BENJAMIN: Then I'11 have to let him see.

MR. CURRIER: Could I ask what you're showing the witness, please?

MRS. BENJAMIN: His income tax.

BY MRS. BENJAMIN:

Q. Now, as I understand it, it's been stipulated that's a true copy, the same one that was filed with the federal government.

A. Yes, it is prepared by firm Chester Kearney.

THE COURT: Okay. Just a minute. Yes, that is their stipulation.

MR. CURRIER: Could I ask which year?

BY MRS. BENJAMIN:

Q. What is the date on it?

A. This is '93, Chester Kearney, yeah.

Q. What is the date that he prepared these taxes?

A. I don't -- I can't say from this document.

Q. Um, do you have the preparer's social security number

A. Yes. E.I. No. 010411241, social security number 005-36-5001.

Q. Of the preparer?

A. Preparer's social security number, there is a box for it.

Q. But there is no date on it?

A. Um, I don't see any date.

MRS. BENJAMIN: That's sufficient. Thank you.

THE WITNESS: You're welcome.

MRS. BENJAMIN: May I enter this in evidence, please?

THE COURT: Be admitted.

MRS. BENJAMIN: And this one is already in.

MR. CURRIER: No objection.

THE COURT: Be admitted.

MRS. BENJAMIN: Do you want this part of it to go or -- I'm talking to Mr. Currier, That's a part of it, but it's not necessary for my needs.

MR., CURRIER: Put it all in. Put it all in.

MRS. BENJAMIN: It's going to be placed in as my exhibit, and I have no interest in it, so I probably -- I probably am not. Oh, I need to go back and get my tablet, if I may. Your Honor, I have about fifteen minutes more testimony. If I could just go into that room and readjust myself, I'm very uncomfortable.

THE COURT: Fine. Go ahead and have the Doctor take you in. That's okay. The jury can stand and stretch if you want. Why don't we take a recess.

(The jury left the courtroom at 2:44 p.m. The following proceeding was held out of the presence of the jury.)

THE COURT: If you want to readjust, feel free to do that. I just as soon come back in and go over what you're going to spend the next fifteen

minutes on so you don't have any problems with the types of questions. Okay?

MRS. BENJAMIN: Oh, yes.

THE COURT: I'11 just wait right here.

MRS. BENJAMIN: I don't want to do it in front of the jury, but f can do it right here, get up. I need to

(Court recessed at 2:45 p.m. and reconvened at 2:50 p.m. The following proceeding was held out of the presence of the jury.)

THE COURT: Could you explain to me what you would like to cover with further questioning? We have had more duplication than I expected, and I'd like to try to help clarify the issues for the jury. So, what is it you want to question him about that you indicated would take about fifteen minutes?

MRS. BENJAMIN: It's possible that it needs to be covered. I forgot I have to make a closing argument.

THE COURT: You'll have --

MRS. BENJAMIN: If it's already in evidence, I can just refer to it in --

THE COURT: Sure. in through your testimony or your witnesses or Mr. Currier's witnesses -- what I end up telling the jury is they can consider any evidence from any witness, regardless of who

called the witness. So if you have the evidence in, um, you can argue it.

MRS. BENJAMIN: Okay. Then the fifteen-minute time period is not a necessity because the things -- there is only one item I need to check and see if I put it in; but the things that are in refer to everything I need to talk about, except that I don't recall that anything was put in about fees in any of the exhibits, what was paid out in the Caribou office, in evidence. Has it been entered into evidence?

DR. BENJAMIN: No, it hasn't.

MR. CURRIER: We have entered Exhibits 5A, B, and C, which are lists of expenditures from the Caribou office.

MRS. BENJAMIN: In the way of their employment records

MR. CURRIER: Payroll records. We won't put in payroll records. This witness wouldn't have any knowledge of it.

THE COURT: Do you want to cover the payroll records?

MRS. BENJAMIN: Yes.

MR. CURRIER: I'll agree to admit them.

THE COURT: Okay. You can offer them and they will be admitted.

MRS. BENJAMIN: Then everything is there that I need.

THE COURT: Okay. You need to ask him anymore questions?

MRS. BENJAMIN: None.

THE COURT: Okay. What I'm going to do is when everything is done, I'm going to have to take a recess because I have to prepare instructions; and during that recess, I'm going to ask both Mr., Currier and Dr., Benjamin and you to review all of the exhibits that have been marked and make sure that they have been offered so that you'll be sure everything is in evidence.

MRS. BENJAMIN: Yeah.

THE COURT: Okay?

MRS. BENJAMIN: Do I give you the jury instructions for me and objections now?

THE COURT: I don't -- we re not quite --

MRS. BENJAMIN: Mr. Currier gave me his.

THE COURT: If you have some, you can give them to me now.

MR. CURRIER: Your Honor --

THE COURT: I'll have to study them. We're not done on the case yet so --

MR. CURRIER: I sense that the evidence is nearly

closed; and because of this recess, it might be a good time to address that simply so we don't need to take another recess.

THE COURT: Well, we'll be taking another recess; but the evidence isn't all in yet, so I'm not comfortable addressing any motions or anything until I know what all the evidence is going to be.

MRS. BENJAMIN: I'11 leave them right there then.

THE COURT: No, I want the instructions I have to have the instructions.

MR. CURRIER: Um, I wasn't going to address any motion. I was going to address the instructions. Could I inquire if the defendants -- are you done calling witnesses?

MRS. BENJAMIN: I'm done with Dr. Bina.

MR. CURRIER: Okay. And if he takes a seat, are you going to call any other witnesses?

THE COURT: Just a second, please. When you're done with this witness, are you going to have anymore questions of this witness, Dr. Benjamin?

DR. BENJAMIN: No, your Honor.
THE COURT: And do you have any other witnesses?

MRS. BENJAMIN: No, none of them showed up.

THE COURT: Okay.

MR. BENJAMIN: I'm terminating my ability to I misunderstood, I apologize.

THE COURT: Are you going to ask -- your mother indicates she's done asking this witness questions, Are you going to ask him anymore questions?

DR. BENJAMIN: I don't know if Mr. Currier is going to ask questions.

MR. CURRIER: I don't intend to.

DR. BENJAMIN: No. I think everything has been hashed out.

THE COURT: Do you have anymore witnesses other than, either one of you, other than this? Will this be the last witness? You have no rebuttal witnesses?

MR. CURRIER: No, sir.

DR. BENJAMIN: So -- I'm sorry,

THE COURT: Go ahead.

DR. BENJAMIN: So he's not going to cross Dr. Bina and has no other witnesses?

THE COURT: Right.

DR. BENJAMIN: We have no other witnesses.

MR. CURRIER: It would appear the evidence is about to close.

THE COURT: Okay. Now, if you do want to discuss jury instructions. I'm receptive to that discussion.

MR. CURRIER: Yesterday, I filed three proposed jury instructions, your Honor.

THE COURT: Right.

MR. CURRIER: Jury instruction number one that's requested deals with the account annexed claim and merely recites the statute.

THE COURT: Right.

MR. CURRIER: Proposed jury instructions two and three deal with the issue of joint venture. The third instruction in particular, I believe, was taken from Alexander's, and most recent version, and outlines for the jury the elements they would have to find to find a joint venture. So, we have requested that in addition to the general instructions the Court gives to the jury that they give them some instruction on the account annexed so they will understand the affidavit that's been submitted.

THE COURT: Okay.

MRS. BENJAMIN: Dr. Bina can come down from the stand.

MR. CURRIER: Dr. Bina, you can take your seat. And one of the other two instructions should be given with regard to the elements of the joint venture and what the jury has to find to find that in fact a joint venture exists. Um, we would think that of the two, jury instruction number three is the better; but the other recites certain case law that the Court may want to be familiar with or incorporate.

We also prepared and filed with the Court a proposed jury verdict form. I know the Court often prepares their own, but we thought we could at least give you our input in that.

THE COURT: Okay. You may be heard, Dr. Benjamin and Mrs. Benjamin, on the issue of jury instructions. I reviewed your proposed verdict form and reviewed your objections and your proposed jury instructions. Is there anything else that you want to --

DR. BENJAMIN: I just wanted to state for the record, your Honor, coming from me, that we have placed objections to plaintiff's proposed jury instructions for number one, number two, and number three; and that also we placed in jury instructions of ourselves for numbered number one, number two, and number three, and that we also have proposed a jury verdict form of our own as well to assist.

THE COURT: Okay. Mr. Currier, have you had a chance to see jury instruction number two with regard to unjust enrichment proposed by the Benjamin's?

MR. CURRIER: I have, your Honor.

THE COURT: Is there any objection to that?

MR. CURRIER: No. Seems to recite the law.

THE COURT: For your information, I have my own instruction with regard to veracity or truthfulness of the witnesses. I believe it covers the issue you've addressed, and I decline to give the specific instruction you requested. I have a

standard instruction on truthfulness that I give, and I will be giving that,
Jury instruction number three, any objection to that?

MR., CURRIER: No. It seems to recite what the law is with regard to a loan, it, I have no objection to it.

THE COURT: The last -- I don't believe that the last sentence -- I'11 have to review the case law.

MRS., BENJAMIN: The last sentence on --

THE COURT: Actual documentary evidence.

MR. CURRIER: That wouldn't be the requirement; but the other elements one, two, and three that they are --

THE COURT: Um, I've read your objections to jury instruction number one, number two, and number three, I'm going to have to review the instructions set forth in Alexander with regard to a joint venture. I note your objections and they are a matter of record. You can renew those objections if I give the instruction that differs from the way that you wanted it stated. That would be done at the end of my instructions. I'11 give you an opportunity to go in the back room to place it on record your objections.

DR. BENJAMIN: Yes, your Honor.

THE COURT: I will tell you that since the evidence is going to be closed that with regard to your motion for -- the motion for summary judgment that I took under advisement, the Court is not

satisfied that the defendants have presented any credible evidence with regard to the issue of fraud on a counterclaim for fraud and there is no evidence -- no material fact generated as to their counterclaim on joint venture. There has been no documentary evidence that would be admissible in evidence in order to prove a joint venture. You are free, however, to argue to the jury as a defense that you were either misled or that the entire sums delivered to you were for the purposes of a joint venture. What I'm precluding you from doing is recovering from Dr. Bina money which you say is due to him, okay? What you will be arguing to the jury or what you can argue is you don't owe the money. This was a joint venture.

MRS. BENJAMIN: Mm-hm,

THE COURT: Okay? However, um, there will not be a claim in front of the jury, nor will the verdict form reflect that Dr. Bina will owe you money. Okay? You understand?

DR. BENJAMIN: Yes, your Honor.

THE COURT: This is essentially where we were, but I took it under advisement. You submitted new evidence, new affidavits. Took that under advisement, and I let all of the evidence in before making my ruling. So, you know when you address the jury in your final arguments that the issue now before the jury is was this a loan and do you have to pay it back.
Now, I also see that there are two issues -Mr. Currier, I'd like you specifically to address this issue. You have two counts. One is account

annexed in the nature of a loan, and the other is an unjust enrichment count.

MR. CURRIER: Mm-hm

THE COURT: Your client has stated unequivocally that he did not lend Mrs. Benjamin money as a loan, and it would seem to be that that would preclude an argument that the money to her was lent to her. He stated it wasn't.

MR. CURRIER: That's why our complaint sounds in two counts.

THE COURT: And the second count is unjust enrichment, which means she received the benefit of the money essentially and it is unjust for her to be allowed to keep the money. So, Mrs. Benjamin, I'm not going to put in a question to the jury about a loan to you because it does not appear to me from the evidence that it's been generated that there was a loan to you. And, Mr. Currier, um, in your final argument, I'm telling you what I'm doing essentially on the basis of the evidence, so the claim that can be argued against Mrs., Benjamin was that she received money or the benefit of the money. There was an appreciation of the benefit by Mrs. Benjamin and that retention of the money by Mrs. Benjamin would be unjust. That's the claim against her.

Mrs. Benjamin, that means that Count 2 only is a count against you. Both Counts 1 and 2 will be against Dr. Benjamin, and I will be telling the jury that they can award -- I'm going to separate the questions -- that they can award verdicts against Dr. Benjamin in both questions, but there

won't be a double recovery. They don't pay it twice if there is a recovery. Okay?

DR. BENJAMIN: I understand, your Honor.

THE COURT: Now, it does appear from what I've been told that all of the evidence is now in and there will be no further witnesses by either side; is that correct?

MR., CURRIER: That's correct.

MRS. BENJAMIN: Yes, your Honor.

THE COURT: Okay. So now all the evidence -- except for review of the exhibits --

DR. BENJAMIN: Okay.

THE COURT: Is that correct? Everybody has rested finally?

MRS. BENJAMIN: Yes.

DR. BENJAMIN: Yes.

THE COURT: Then I'm going to have to go downstairs and this will take some time and when I come back upstairs, I'11 be instructing the jury essentially, Mr. and Mrs. Benjamin, your two instructions relating to unjust enrichment. That's jury instruction two and jury instruction three with regard to a loan, pretty much as worded, will be given, so you'll know what the law is. That's what the jury is going to use to make a decision.

I'11 also explain the burden of proof in this

case by the plaintiff. I will be giving an instruction in an itemized account. I'll do that pursuant to the statute, and I'm going to have to look at the statute before I can tell you whether I'll use the wording as submitted by the plaintiff.
I will also be instructing the jury on the elements of a joint venture because you were claiming that exists and using that as a defense; and, um, the jury needs that information in order to determine whether or not a joint venture did exist for purposes of the defense that you don't owe the money.
So, we'll be in recess. I may be a while.

MRS. BENJAMIN: Your Honor, when you say a while, are we talking about a couple of hours?

THE COURT: Oh, no. I might be thirty minutes.

MRS. BENJAMIN: I wanted to go home and put on --

THE COURT: I don't know how long -- how long will that take you?

MRS. BENJAMIN: No, I can't, because it takes about thirty minutes for me to get there. I need to put on something for my back.

THE COURT: I expect to be perhaps thirty minutes. I'm not going to hold myself to that.

MRS. BENJAMIN: I'll stay right here.

THE COURT: We'll be in recess. The parties do not have to remain in the courthouse or courtroom; but if you leave, please indicate where you can be found so that we can resume promptly when I'm

ready. Oh, also, I m going to take this time either now or when you come back to go through all your exhibits to make sure you've offered them all and I admitted the ones you want into evidence because that's what the jury will receive, and Mr. Currier will do the same.

(Court recessed at 3:10 p.m. and reconvened at 4:20 p.m. The following proceeding was held out of the presence of the jury.)

THE COURT: Before the jury is brought up -- everybody except the parties may be seated. Um, when you argue to the jury, as I've indicated to you, the plaintiff's claim on the loan will be just against Dr. Benjamin and the unjust enrichment will apply to both defendants. Um, when you argue to the jury, you do not -- I do not want any of the parties to mention action taken by the Court, for example, um, for the Benjamin's. Mrs. Benjamin, I don't want you to say the judge has dismissed the claim against me on the loan, because I'11 instruct them that that's the only claim against you.
Likewise, Mr. Currier will not be able to tell the jury that the counterclaims against Dr. Bina have been dismissed. That's a matter for the Court; and the parties, when you argue, argue strictly your claims that are now existing, okay?
Okay. You may be seated. You can remain standing if you want because the jury will be back up.

MR. CURRIER: Your Honor, I notice the District Attorney was here with another matter.

THE COURT: No, I'm going to go through with this case and take care of that. Are both the parties satisfied all the exhibits have been offered, have been inspected, and admitted by the Court?

MRS. BENJAMIN: I have one question. She asked me about the newspaper articles, and my understanding was that they --

THE COURT: They are not admitted, that's correct. Anything else? Okay. I'11 be asking you both when the jury comes up whether you now rest finally and you can answer yes. I assume that's the case.

MRS. BENJAMIN: That's the case.

(The jury entered the courtroom at 4:23 p.m.)

THE COURT: This is the jury verdict form, just so you'll know how it's worded.

MR. CURRIER: Thank you.

THE COURT: If you want to take a moment to look at that before we actually proceed. Pass these to the Benjamin's, please. You may be seated.

MR. CURRIER: That`s fine, your Honor.

THE COURT: I understand that the defendants have now rested?

MRS. BENJAMIN: Yes, your Honor.

THE COURT: And there is no further rebuttal?

MR. CURRIER: That's correct, your Honor.

THE COURT: So, all parties rest finally?

DR. BENJAMIN: Yes.

MR. CURRIER: Plaintiff rests.

THE COURT: All parties resting finally, you may proceed with your final arguments.

MR. CURRIER: Thank you, your Honor.

CLOSING ARGUMENTS

MR. CURRIER: Ladies and gentlemen, I'd like to thank you for your attention over the last three days. I have never sat on a jury; but having watched many juries, I is can tell that at times it becomes uncomfortable and tedious because lawyers and litigants tend to want to drive home a point repeatedly to make an impression often times and we lose sight of the picture.

I'm not going to go through the evidence with you because, frankly, you've been through it several times over the last three days. I want to talk to you instead about this process and how you should approach your analysis of what you 've heard.

Giving a closing argument is often difficult because you want to summarize in an impressive way for a jury the evidence that's been taken. I think what I'd like a to do with you instead is to impress upon you two words; and the first of those is trust, and the second is truth. In our society, we often approach matters with trust. If you look at a one dollar bill, you'll see at the top it says it's a federal reserve note. It's a promise by the government backed by the faith and credit of our government that upon

presentation you'll be given money or something of worth equal to that note.

In deciding the issues in this case, you'll be asked to consider the trust that existed between these parties, these litigants, because there is no promissory note or instrument between them. So, you're going to have is to apply your decision, your concepts, your morals, to the situation and determine if there was an element of trust or confidence between these parties.

We're often called upon in our daily lives to put our faith or trust in something, whether it's the full faith and credit of our government backing our currency or the trust that we have in the system of justice, which is the second area that I want to talk to you about when we talk about trust. The litigants who come here are required to have faith in this system, to trust the ultimate outcome, to trust juries to decide cases based on the evidence, to trust the Court to give you the law as we understand it, and to trust those who appear before you to tell the truth and to 6 present the facts to you in an honest and straightforward way.

Truth is the second concept that I would ask that 9 you take to the jury room with you. We're all called upon at various times to take an oath. Fifteen years ago, I took 11 an oath in a courtroom like this in Houlton and I took an 12 oath to uphold the Constitution and the laws of this state and that's my oath as an attorney. Each of you took an oath 14 here the other day to apply the law as it was explained to 15 I(You by the Court to the facts that you hear in this case; Is and we have to trust you to fulfill that oath, much as litigants trust me as an attorney to fulfill my oath to is follow the law. And judges take an oath when they assume that position and witnesses take an oath to tell the truth and you decide, because you are the finder of fact in this case, if the witnesses that you've heard from have told you the truth.

We are very confident that the witnesses we have presented and the testimony that we have put before you is the truth, is believable; and, in fact, we have gone to great pains, as you have seen, to verify every fact put in front of you by the plaintiff Dr. Bina, through documents, through the testimony of

other witnesses, and in some instances the testimony of the other litigants. Truth is an important and sometimes rare commodity, especially when you get into litigation of this kind. It ultimately is your job to determine the truth in this case and you've taken an oath e to do that and we have to trust you to do that and that's what we're asking you to do.

Now, as to the details of this particular claim, they are fairly simple, as I explained in my opening statement. This is a claim that sounds in two counts. In the first count is a loan or an account annexed, and the Court will explain that to you. In the second count, that is called unjust enrichment; and the Court will explain to you what unjust enrichment is.

From our perspective as the plaintiff, we allege that the defendants have been unjustly enriched. They received something of value and retained it unjustly. They enriched themselves with it. And the Court will explain the law We simply ask that you apply the facts to that law when making your findings, and you'll be given a detailed jury verdict form to fill out with regard to each count and each defendant. So, you'll have to make some separate findings in that regard.

The only defense that's been raised in this case is that these payments by the plaintiff to the defendants were in the nature of a joint venture, Now, you've heard references to a joint venture by myself as a partnership or the coming together of two or more people for some specific a I(purpose. The Court will instruct you as to what a joint venture is and will give you the elements that you must find s to determine if there's been a joint venture.

You heard testimony in this case about the responsibilities of each party with regard to this joint venture; and, frankly, with regard to that defense, the defendants bear the burden. The plaintiff is not required to prove or disprove that there was a joint venture. We simply ask that you apply the evidence you've heard to the definition of joint venture, and we're confident that you Is will find that there was no joint venture.

Finally, we would ask that you consider carefully

the documents that have been submitted. Review the checks. Review the ether documentation, Look at the dates. Verify for yourself what you 've heard here over the last three days. Unfortunately, you're not allowed to inspect the documents as the testimony is given, so it's often difficult to recall; but take a moment to review the documentation and look at it.

With regard to Count 1, which is on an account annexed, there's an affidavit; and the Court will give you an instruction as to the weight that that affidavit may carry in your deliberations with regard to Count 1.

I would simply ask, finally, that in making your deliberations you ask yourself if the evidence submitted by the plaintiff had the ring of truth. Did it make sense? Did it sound reasonable based upon everything that you heard? And if it did, then we've carried our burden.

As I explained to you at the outset, the burden of proof is not beyond a reasonable doubt, but rather by a preponderance of the evidence, more likely than not; and the Court will give you a general instruction as to what that means.

I want to thank you for your attention over the Is last three days. I want to apologize. I think from time to time I may have been quick to get to my feet and argue and sometimes that's very distracting for people who are trying to pay close attention. So if I've done that, I want to apologize to you at this point for having done so. I trust that you will take time to deliberate and to review the evidence and to apply the law as the Court will give it to you.

Thank you.

THE COURT: Thank you. Dr. Benjamin or Mrs. Benjamin, who wants to go first?

DR. BENJAMIN: Mrs. Benjamin will.

MRS. BENJAMIN: Thank you, I know you're glad it's just about over, as I am. I have three things I'd like a to say to you. Um, the first thing is credibility being an important thing in anything that you hear. If I tell you something or another witness tells you something and you listen to that, what you re told, and it sounds credible, then you should observe it. If it does not sound credible, you of course should dismiss it. You should not listen to it.

If you have information from me or from another witness that has sworn to that, that should be the absolute truth. When you tell it and when you retell it and when you retell it, it should be exactly the same information. It should be the truth the first time, the second time, and the third time. It should not fluctuate or change based on the circumstances

The things that you have been told about that happened in this period of time, you know from the evidence when it took place. During that time, all the things that I can recall that occurred from my point of view that I was involved in or had anything to do with I believe I've related to you fully. I told you everything I could think of that had anything to do with it and I did not deviate, and I hope you are able to understand all I said in the intent I meant it and evaluate based on what I've told you and the evidence that was presented and the witnesses that came before you.

Time had passed from the beginning of the incidents, but not an enormous amount of time. This all occurred in 1993 and this is 1996. About three years total. ten we're telling this, it's exceptional and understandable for me if some memories are not exact; but they have an understanding that something did occur and when it occurred, some time frame, some understanding, When I say is credibility, I want to know -- for me, credible things have to fit in what could logically have occurred.

We have a situation where there was a physician Is working on his own in one office and was approached and the -- the second office was not for a single benefit of that is physician. If he just wanted an office, he could have remained right where he was. He didn't have to change or add or anything. The

circumstances of this situation caused him to have two offices to maintain, two staffs, become hopelessly in debt; and his family, including myself, had to come to his aid, his financial aid.

And in the process of all this occurring to Dr. Benjamin, all of us have, Dr. Benjamin and his family, had consequences to pay for it. We have patients who suffered because he had to be out of his office often on account of all these things going on. Ultimately, he closed his practice because of what was going on. It's a tragedy that it should have occurred but it did. There is nothing that we can do to change that now; but in the process of it happening, if decisions, different decisions, had been made, he had never gone forward with the joint venture, what occurred would not happen. What occurred would not have occurred.

There was trust involved. Dr. Benjamin put I himself in a position that he should not have put himself in, and that was through trusting. It is a vital element of what occurred, trust. It's an important element. It's as important as the credibility.

The circumstances in the community, be they what is they are, could have motivated different decisions at some time or another; but they did not cause the joint venture to take place. They could have had something to do with it not being completed, and I believe they did; but the joint venture started as a good thing, as a proposal for ultimate patient care. It didn't start out as a money-making enterprise for each individual to come in a group and pool in all the funds. It was to be divided space between individuals who could maximize their ability to earn by reducing their costs for office space. As simple as that.

There wasn't any big elaborate plan; and none of the business deals that have been made in this area by myself, Mr. Benjamin, whom I can speak directly for, have a ever been based on contracts. In this area, you say I need a product and the product costs this amount and I'm willing s to pay you exchange. You don't make a lot of elaborate paperwork. That's a good thing. That's a trusting, caring kind of community. Flukes happen and this was one of them.

It doesn't deter me from meeting a person, having a proposition and I like it and they seem to like it and I go with it. This one did not work; and in the process, there were people hurt. If we could bring everybody back to the point where they were before all of this politics and mess got involved, we would; but that's not possible.

So, I would like, if you would, to judge everything you've heard and you come back with a notice to me exactly what you feel is right and that I should be doing or not doing. Everyone has an opinion about what they should or should not do in a situation; but independent people who look at a situation observe the facts, the information, the witnesses, their demeanor, and the credibility of their testimony, then come back with an answer, and that's what I would appreciate if you could do Or US.

We have done our best to give you all the information we have. We didn't have anymore available to us to give you. If we had, we would have.

Thank you.

THE COURT: Thank you. Dr. Benjamin, you may argue.

DR. BENJAMIN: Your Honor, that's it for the defense.

THE COURT: Pardon me?

DR. BENJAMIN: That`s it for the defense.

THE COURT: Is there any rebuttal?

MR. CURRIER: No. Thank you, your Honor.

CHARGE TO THE JURY

THE COURT: Members of the jury, now that you heard all of the evidence in this case, as well as the arguments of the

plaintiff's lawyer and the argument of the defendant party, it's my duty to read you the instructions on the law which apply in this case. These instructions will be in three parts. First, the general rules that define and control the jury's duties. Second, the instructions that explain the law to you. And, third, some rules for your deliberations.

Several of you have been on prior juries. please disregard any prior instructions that you've heard or prior evidence and apply only these instructions to the evidence that you find in this case. It is your duty to find the facts from all of the evidence that has been presented to you' and to those facts, you must apply the law as I give it to you, whether you agree with it or not.

You must not be influenced by any personal likes or dislikes, by opinion, prejudice, or by sympathy. That 'O means you must decide the case solely on the evidence before '1 Jlyou and in accordance with these instructions, and you'll recall that you took an oath promising to do so and you were selected by all of the parties in this case on the basis of that oath.